

William Wardlaw, Treasurer
Feinstein for Senate
1801 Avenue of the Stars, suite 829
Los Angeles, CA 90067

Fund for the Majority
1801 Avenue of the Stars, suite 829
Los Angeles, CA 90067

June 20, 2012

Anthony Herman
Office of the General Counsel
Federal Election Counsel
999 E Street, N.W.
Washington, D.C. 20463

MUR # 6597

Re.: Complaint against Kinde Durkee

Dear Mr. Herman,

I write this letter to file a complaint pursuant to 2 U.S.C. § 437g(a)(1) against Kinde Durkee ("Respondent") for violations of the Federal Election Campaign Act ("Act").

A. FACTS

Respondent, and her firm Durkee & Associates, provided professional treasury services to Feinstein for Senate (the "Senate Committee") and Fund for the Majority (the "PAC") (and, collectively, the "Committees") until her arrest in September of 2011. Respondent maintained the bank accounts for the Committees; received and deposited receipts into the bank accounts; issued disbursements from the bank accounts; and filed all required reports with the Federal Election Commission ("Commission").¹ Before her arrest in September of 2011, Respondent had signing authority for more than four hundred political committee and nonprofit bank accounts.² Unbeknownst to the Committees, Respondent had, for years, conspired with her business partners to embezzle funds from the Committees and from other clients as well.³ Respondent pleaded guilty to multiple violations of federal criminal law on March 30, 2012.

¹ Though Respondent represented herself on various Senate Committee reports as the treasurer and performed all treasurer duties during the relevant period, it is not entirely clear whether she was the treasurer or assistant treasurer of the Senate Committee. Given that she acted as treasurer of both Committees, we refer to Respondent as the Committees' "treasurer" for purposes of this Complaint. Respondent also has been identified as the Committees' treasurer in the Letter from Committee Treasurer, William Wardlaw to Federal Election Commission (Oct. 14, 2011) and the Committees' *Sua Sponte* Submission to the Federal Election Commission (April 2, 2012).

² See generally Compl., *Wardlaw v. First California Bank, et. al.*, SC114232 (Sup. Ct. Cal. Sept. 22, 2011) ("Wardlaw Complaint") (attached as Exhibit A). Complainant incorporates into the Complaint, by reference, the allegations made against Respondent in ¶¶ 1 – 102 of the Wardlaw Complaint.

³ See Wardlaw Complaint. See also Compl., *United States v. Durkee*, 2:11-mj-00274-DAD (E.D. Cal. Sept. 6, 2011) ("Criminal Complaint") (attached as Exhibit B); Information, *United States v. Durkee*, 2:12-cr-123 (E.D. Cal. Mar. 27, 2012) ("Information") (attached as Exhibit C).

Like dozens of other California political committees, the Committees reasonably relied on Respondent's representation that she was handling its funds properly and was complying with all applicable Commission regulations. Respondent filed regular disclosure reports with the Commission, which omitted the unauthorized transfers. Likewise, Respondent ensured that the Committees' disbursements were paid fully on time. In addition, Senator Feinstein's campaign staff required Respondent to provide them with regular reports – usually on a weekly basis – detailing the receipts, expenditures, and balances of each Committee's account. These regular reports showed receipts consistent with internal fundraising records maintained by the Committees. The expenditures reported by Respondent were also consistent with the disbursements made by Committee staff. Thus, despite having significant safeguards in place, the Committees did not discover this illegal activity until federal authorities arrested Respondent last year.⁴

As part of her scheme, Respondent made unauthorized transfers from the Committees' accounts to the accounts of other clients, and also made unauthorized transfers from the Committees' accounts to her personal and business accounts.⁵ Some examples of these unauthorized transfers are described with specificity in paragraphs 40 through 49 and paragraphs 74 through 81 of the Wardlaw Complaint, attached as Exhibit A. According to the federal criminal complaint, Respondent used the funds to "pay her personal expenses, including mortgage payments and American Express charges, as well as business expenses."⁶

The full extent of Respondent's theft is not yet known. In its July 2011 quarterly report to the Commission, the Senate Committee reported having \$5,011,399.45 in cash on hand.⁷ After Respondent's arrest, the Senate Committee discovered that it had only \$662,100.87 in its bank accounts at First California Bank.⁸ But even this figure may not accurately reflect the amount of Senate Committee funds remaining in these accounts. According to the Bank, Respondent "commingled funds belonging to various different campaigns and organizations and made repeated transfers between accounts on which Respondent had signing authority."⁹ As a result, the "balance credited to any given account did not represent accurately the funds, if any, actually belonging to the campaign or organization named on the account" and "account balances contained funds that had previously been credited to non-related accounts."¹⁰ Based on what it has discovered to date, the Senate Committee believes that Respondent embezzled \$4,545,386.12 from the Senate Committee.¹¹

When filing reports for the Committees with the Commission, Respondent deliberately

⁴ Accordingly, because the Committees reasonably relied on the Respondent and had no knowledge of Respondent's illegal activity until after her arrest, the Committees are named as the Complainants in this Complaint rather than the Respondents.

⁵ See Wardlaw Complaint, ¶ 39.

⁶ Criminal Complaint, ¶ 9; see also Wardlaw Complaint, ¶ 51; Information ¶ 53.

⁷ See FEC Form 3, July Quarterly Report of Receipts and Disbursements, at 4.

⁸ See Letter from Committee Treasurer, William Wardlaw to Federal Election Commission (Oct. 14, 2011). After discovering the embezzlement, Senator Feinstein loaned the Committee \$5,000,000.

⁹ See Letter from First California Bank to Durkee Client (Sept. 16, 2011) (attached as Exhibit D).

¹⁰ *Id.*

¹¹ See FEC Form 3, Amended October Quarterly Report of Receipts and Disbursements, at 186.

omitted the unauthorized transfers from the Committees' reports. For instance, Respondent failed to disclose on the Senate Committee's reports the unauthorized transfers described in paragraphs 40 through 49 or paragraphs 74 through 81 of the Wardlaw Complaint. By failing to disclose the unauthorized transfers as disbursements, Respondent also significantly misstated the Committees' cash-on-hand figures.

B. LEGAL DISCUSSION

The Commission "will consider treasurers parties to enforcement proceedings in their personal capacities where information indicates that the treasurer knowingly and willfully violated an obligation that the Act or regulations specifically impose on treasurers or where the treasurer recklessly failed to fulfill the duties imposed by law"¹² Here, as detailed below, Respondent knowingly and willfully violated the Act and Commission regulations on a repeated basis. The Commission should commence an investigation and proceed with an enforcement action against Respondent.¹³

First, although the Act and Commission regulations require treasurers to deposit all committee receipts in designated bank accounts,¹⁴ Respondent made unauthorized transfers from Committees into the bank accounts of other clients, and into her own personal and business accounts.

Second, because Respondent did not disclose these unauthorized transfers on the Committees' reports to the Commission, Respondent violated the Act and Commission regulations by failing to accurately report to the Commission committee receipts, disbursements, and cash on hand.¹⁵ Commission regulations make treasurers personally responsible for the timely and complete filing of committee disclosure reports, and for the accuracy of the information in these reports.¹⁶ By making unauthorized transfers from the Committees' accounts to the accounts of others, and by failing to disclose these unauthorized transfers on the Committees' reports, Respondent knowingly and willfully violated the Act and Commission regulations.

Third, Respondent knowingly and willfully violated the Act and Commission regulations by transferring the Committees' funds to her own personal and business accounts. The Act prohibits treasurers from commingling committee funds with the "personal funds of any individual," including her own.¹⁷

Fourth, Respondent knowingly and willfully violated the Act and Commission

¹² Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 F.R. 3, 4 (Jan. 3, 2005).

¹³ See MUR 5610 (Haywood), MUR 5721 (Phelps), MUR 5811 (Willis), MUR 5872 (Hildebrand), MUR 6179 (Ward)

¹⁴ See 2 U.S.C. § 432(h)(1); 11 C.F.R. § 103.3(a). When performing the duties of treasurer with respect to the Senate Committee, Respondent assumed the legal responsibilities that the Act assigns to the treasurer. See 11 C.F.R. § 102.7(a).

¹⁵ See 2 U.S.C. §§ 432(c)-(d), 434(b)(1)-(5), (6)(A)-(B); 11 C.F.R. §§ 104.3(a)-(b).

¹⁶ See 11 C.F.R. § 104.14(d).

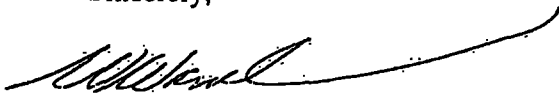
¹⁷ See 2 U.S.C. § 432(b)(3); 11 C.F.R. § 120.15

regulations by converting campaign contributions or donations to personal use.¹⁸ The Act and Commission regulations bar any person from converting the funds in an authorized committee account to "personal use."¹⁹ Funds are "considered to be converted to personal use if the contribution or amount is used to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office"²⁰ Certain expenses – including home mortgage, rent, and utility payment expenses – are considered *per se* "personal use."²¹ By using Senate Committee funds to pay her mortgage expenses – and other personal and business expenses – Respondent violated the "personal use" provisions of the Act and Commission regulations.

C. REQUESTED ACTION

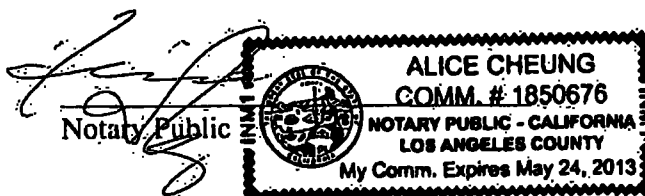
There is substantial evidence that Respondent has violated the Act. The Commission should investigate these violations, including whether they were knowing and willful. Should the Commission determine that Respondent has violated the Act, we request that Respondent be enjoined from further violations and be fined the maximum amount permitted by law.

Sincerely,



William Wardlaw
Treasurer
Feinstein for Senate

SUBSCRIBED AND SWORN to before me this 20th day of JUNE, 2012.



My Commission Expires:

MAY 24, 2013

¹⁸ See 2 U.S.C. § 439a(b)(1).

¹⁹ See 2 U.S.C. § 439a(b)(1); 11 C.F.R. § 113.1(g).

²⁰ See 2 U.S.C. § 439a(b)(2).

²¹ *Id.*

Exhibit A

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Los Angeles Superior Court

SEP 28 2011

John A. Clarke, Executive Officer/Clerk

By D. McKinnay, Deputy

8 SUPERIOR COURT OF CALIFORNIA
9 COUNTY OF LOS ANGELES
10 WESTERN DISTRICT

11 WILLIAM WARDLAW, Treasurer
12 for
13 FEINSTEIN FOR SENATE and
14 FUND FOR THE MAJORITY
Committee;

15 FEINSTEIN FOR SENATE
Committee; and

16 FUND FOR THE MAJORITY
17 Committee,

18 Plaintiffs,

19 vs.

20 FIRST CALIFORNIA BANK;

21 DURKEE & ASSOCIATES, LLC;

22 KINDE DURKEE;

23 JOHN FORGY;

24 MATTHEW LEMCKE;

25 AND DOES 1 through 10, inclusive,

26 Defendants.

JOHN L. SEGAL

Civil Action No. SC114232

COMPLAINT:

1. FRAUD AND DECEIT;
2. CONVERSION;
3. BREACH OF CONTRACT;
4. BREACH OF IMPLIED
COVENANT OF GOOD
FAITH AND FAIR DEALING;
5. AIDING AND ABETTING
FRAUD;
6. AIDING AND ABETTING
CONVERSION;
7. VIOLATION OF BUSINESS
AND PROFESSIONS CODE
§§ 17200 et seq., UNLAWFUL,
FRAUDULENT AND UNFAIR
BUSINESS ACTS AND
PRACTICE;
8. DECLARATORY RELIEF

JURY TRIAL DEMANDED

CASE MANAGEMENT CONFERENCE

JAN 11 2012

LAW OFFICES

COTCHETT,
PITRE &
MCCARTHY, LLP

Date

COMPLAINT

11/10/2016 10:00 AM

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1 Plaintiff William Wardlaw, as the Treasurer for Feinstein for Senate and the
2 Fund for the Majority, Feinstein for Senate Committee, and Fund for the Majority
3 Committee (hereinafter collectively referred to as "Plaintiffs"), hereby bring this
4 action for damages and relief against Defendants First California Bank, Durkee &
5 Associates, LLC, Kinde Durkee, John Forgy, and Matthew Lemcke for violations
6 of California common law, as well as violations of the California Unfair
7 Competition Law ("UCL") (Bus. & Prof. Code §§ 17200, *et seq.*). Plaintiffs
8 complain and allege upon information and belief based, *inter alia*, upon
9 investigation conducted by Plaintiffs and their counsel, except as to those
10 allegations pertaining to Plaintiffs personally, which are alleged upon knowledge.
11 All claims are based upon California state law.

12 **I. INTRODUCTION**

13 1. On Friday, September 2, 2011, federal agents arrested Kinde Durkee
14 ("Durkee") in Burbank, California for mail fraud. Durkee was a long-time
15 campaign treasurer and financial manager for political campaigns and non-profit
16 organizations. For over 20 years, Durkee held herself out as a campaign treasurer
17 and financial manager with significant experience in accountancy, from which she
18 built legitimacy for herself and her company within the campaign and non-profit
19 worlds. Durkee had served as the campaign treasurer for dozens of political
20 campaigns over the years and was well-known and well-respected in political
21 circles in California.

22 2. Sadly, Durkee and her company betrayed that respect and trust.
23 According to a federal criminal complaint filed against her by the United States
24 Attorney General, Durkee has embezzled millions of dollars over the years from
25 her clients. As described by U.S. Representative Susan Davis of San Diego, it
26 now appears that Durkee was "the Bernie Madoff of campaign treasurers."

27 3. In the days following her arrest, as Durkee's web of deceit began to
28 unravel, it soon became apparent that there were a number of victims of Durkee's

1 fraud, including three campaign accounts of United States Senator Dianne
2 Feinstein, the long-time Senator for California. Senator Feinstein's strong base of
3 supporters is the result of her dedicated service to Californians and the American
4 public. The fraud alleged herein constitutes not only the personal betrayal of
5 Senator Feinstein, but also an unforgivable crime against the public trust and the
6 millions of California citizens who have long supported Senator Feinstein and
7 other public officials and non-profits in this State.

8 4. From an office in Burbank, California, Durkee operated and
9 masterminded a multimillion dollar fraudulent scheme. Her company, Durkee &
10 Associates ("D&A") was a front for the scheme. Durkee and her partner, John
11 Forgy ("Forgy"), as well as her business associate Matthew Lemcke
12 ("Lemcke"), all conspired and agreed to take part in and assist this fraudulent
13 scheme. A fraudulent scheme of this size and scope took a number of people and
14 entities to operate.

15 5. The scheme also required the assistance of willing financial
16 institutions. In this case, **First California Bank** was at the heart of the illegal
17 transfer of money out of Plaintiffs' accounts. Indeed, First California Bank
18 recently summed it up best, sending a letter to various accounts customers,
19 acknowledging that,

20 . . . it appears that Durkee had comingled funds belonging to
21 various different campaigns and organizations and had made
22 transfers between accounts on which Durkee had signing
23 authority.

24 We concluded that there was a very high likelihood that the
25 balance credited to any given account did not represent
26 accurately the funds, if any, actually belonging to the campaign
or organization on the account. In certain circumstances, it is
apparent that account balances contained funds that had
previously been credited to non-related accounts. These
conditions appeared to be pervasive in the Durkee controlled
accounts.

27 6. Despite knowledge of this pervasive pattern of misconduct, First
28 California Bank continued to provide banking services to Durkee and Durkee &

1 Associates, LLC for many years, happy to collect the fees and interest generated
2 by the scores of accounts Durkee maintained at the Bank. Investigation will reveal
3 other professionals, including attorneys, accountants, and additional banks had
4 full knowledge of the wrongful acts committed by D&A and the individuals.

5 7. For years, Durkee and others took advantage of their positions of trust
6 they were privileged to hold to secretly siphon off money that was intended to
7 support causes that are important to the American people. Over the last two years
8 alone, it is estimated that Durkee and her co-defendants stole millions of dollars
9 from at least two of Senator Feinstein's campaign committees, Feinstein for Senate
10 and Fund for the Majority (hereinafter, "the Feinstein Committees"). In the wake
11 of this massive fraud, investigators are still working to determine the full extent of
12 the harm inflicted by the defendants on the Feinstein Committees and many other
13 entities, including numerous non-profit organizations.

14 8. What is clear, is that Durkee and her cohorts – each with the full
15 knowledge of the other – abused the trust she gained over decades in the political
16 and non-profit world, in order to steal millions of dollars from innocent Americans
17 who have supported the lifetime of good works performed by committed
18 individuals like Senator Feinstein and other public servants and entities. By filing
19 this Complaint, Plaintiffs seek to obtain justice for all who have contributed
20 money in support of Senator Feinstein, other elected officials, and the dozens of
21 non-profits Durkee has defrauded.

22 **II. JURISDICTION AND VENUE**

23 9. Defendants, and each of them, are subject to the jurisdiction of this
24 Court by virtue of their business dealings and transactions in California, by having
25 caused injuries through their acts and omissions throughout the State of California,
26 and by their violation of California common law. Defendant Durkee &
27 Associates, LLC's principal place of business is at 1212 South Victory Boulevard,

1 Burbank, California. Defendants Kinde Durkee, John Forgy, and Matthew
2 Lemcke are all California citizens who reside in the State of California.

3 10. This Court has subject matter jurisdiction over all causes of action
4 asserted herein pursuant to Article VI, § 10 of the California Constitution. Each
5 cause of action asserted, including claims alleging violations of California
6 common law, arise exclusively under the laws of the State of California.

7 11. The damages suffered by Plaintiffs exceed this Court's
8 jurisdictional minimum.

9 12. Each Defendant has sufficient minimum contacts with California, is a
10 citizen of California, is registered to conduct business in California, has property
11 in California, or otherwise purposefully avails itself of benefits from California so
12 as to render the exercise of jurisdiction over it by the California courts consistent
13 with traditional notions of fair play and substantial justice.

14 13. Venue is proper because the First California Bank branch at which
15 the Feinstein Committees' accounts were held, and through which Defendants
16 operated the scheme, is located in Los Angeles County, in the West Division.
17 Furthermore, the headquarters of Defendant Durkee & Associates, LLC is located
18 in Burbank, California, which is located in the County of Los Angeles. The
19 campaign accounts that the Defendants embezzled monies from were all located in
20 the County of Los Angeles. The Defendants all reside in or around the County of
21 Los Angeles. The wrongful acts alleged in this case all occurred in the County of
22 Los Angeles. Venue is proper in the County of Los Angeles Superior Court.

23 **III. THE PARTIES**

24 **A. PLAINTIFFS**

25 14. Plaintiff William Wardlaw is a citizen of the state of California and
26 a resident of the County of Los Angeles.

27
28 ///

1 15. Feinstein for Senate is a campaign committee registered with the
2 Federal Elections Committee as a principal campaign committee for the Honorable
3 Dianne Feinstein.

4 16. Fund for the Majority is a campaign committee registered with the
5 Federal Elections Committee as a PAC for the Honorable Dianne Feinstein.

6 **B. DEFENDANTS**

7 17. Defendant Durkee & Associates, LLC ("D&A") is a California
8 limited liability corporation with a principal place of business in Burbank,
9 California. D&A is a business management firm that specializes in political, non-
10 profit and small business accounting and financial management. D&A was
11 incorporated as a California LLC on September 22, 2003.

12 18. Defendant First California Bank is a California bank headquartered
13 in Westlake Village, California and at all times maintained an office in Los
14 Angeles County. First California Bank is a full-service commercial bank
15 chartered under the laws of the State of California and is subject to supervision by
16 the California Department of Financial Institutions. The Federal Deposit
17 Insurance Corporation insures the Bank's deposits up to the maximum legal limit.
18 First California Bank is a wholly-owned subsidiary of First California Financial
19 Group, Inc. (NASDAQ: FCAL).

20 19. Defendant Kinde Durkee ("DURKEE"), founder and member of
21 D&A, is a citizen in the State of California and a resident of the County of Los
22 Angeles.

23 20. Defendant John Forgy ("FORGY"), a partner at D&A, is a citizen
24 of the State of California and a resident of the County of Los Angeles.

25 21. Defendant Matthew Lemcke ("LEMCKE"), Manager of Client
26 Services at D&A, is a citizen of the State of California and a resident of the
27 County of Los Angeles. LEMCKE has been employed by D&A since 2001, and

28

was responsible for reviewing client financial reports before submission to upper management including DURKEE.

C. AGENCY, CONSPIRACY, AND AIDING AND ABETTING

22. At all times relevant to this Complaint, Defendants, and each of them, were acting as the agents, servants, employees, joint venturers, and/or representatives of each other, and were acting within the course and scope of their agency, employment and/or joint venture, with the full knowledge, consent, permission, authorization and ratification, either express or implied, of each of the other Defendants in performing the acts alleged in this Complaint.

23. Defendants, and each of them, participated as members of a conspiracy and/or aided and abetted one another in furtherance of the schemes herein alleged, or assisted one another in carrying out the purpose of the conspiracy alleged herein, and have performed acts and made statements in furtherance of the conspiracy in violation of California law. Each of the Defendants acted both individually and in concert with the other Defendants with full knowledge of their respective wrongful conduct. As such, the Defendants conspired together, building upon each other's wrongdoing, in order to accomplish the acts outlined in this Complaint. Defendants are individually sued as principals, participants, and/or as aiders and abettors in the wrongful conduct complained of, and the liability of each arises from the fact that each has engaged in all or part of the improper acts, plans, schemes, conspiracies, or transactions complained of herein.

D. UNNAMED PARTICIPANTS

24. Numerous individuals and separate business entities participated actively during the course of and in furtherance of the wrongdoings alleged, and many acts were done in the course of, and in furtherance of, the conspiracy with intent to defraud. The individuals and entities acted pursuant to agreement and in

1 concert with each other. They also acted as agents for principals, in order to
2 advance the objectives of the conspiracy.

3 **E. DOE DEFENDANTS**

4 25. The true names and capacities, whether individual, corporate,
5 associate, or otherwise, of Defendants Doe 1 through Doe 5, inclusive, are
6 unknown to Plaintiff, who therefore sues said Defendants by such fictitious names
7 pursuant to Section 474 of the California Code of Civil Procedure. Plaintiff is
8 informed and believes, and on that basis alleges, that each of said fictitious Doe
9 Defendants is in some manner responsible for the acts, conduct, and occurrences
10 alleged herein, as either actual perpetrators or co-conspirators, aiders and abettors,
11 or primary officers and/or managers with knowledge and control of the
12 perpetrators' activities. Plaintiffs will seek leave of the Court to amend this
13 Complaint to allege the true names and capacities of the Doe Defendants when the
14 same are ascertained, as well as the manner in which each fictitious Defendant is
15 responsible for the damages sustained by Plaintiff.

16 26. Bank Doe Defendants Doe 6 through Doe 10 are financial institutions
17 at which DURKEE, D&A, and/or the other named Defendants maintained
18 accounts into which Plaintiffs' funds were transferred, misappropriated, or co-
19 mingled, without authorization, or which otherwise knowingly provided
20 Defendants with substantial assistance in the course of their scheme.

21 **IV. FACTUAL BACKGROUND**

22 **A. KINDE DURKEE & DURKEE & ASSOCIATES WERE**
23 **TRUSTED AND WELL-REGARDED**

24 27. DURKEE is a veteran campaign treasurer who resides at 3907 Lewis
25 Avenue in Long Beach, California, a property she owns along with her husband
26 and business partner, John Forgy. Durkee is also reported to own another property
27 located at 1212 South Victory Boulevard, in Burbank, California, also with John
28 Forgy, which is the headquarters of D&A. D&A is also reported as having an

1 additional address at 601 South Glen Oaks Blvd., Suite 211, Burbank, CA 91502,
2 and owns numerous other properties.

3 28. According to reports, DURKEE began her career in campaign finance
4 in the 1970s on various campaigns, as a protégé of veteran campaign treasurer
5 Jules Glazer. Due to the relative dearth of professional campaign treasurers in the
6 state, DURKEE and D&A quickly garnered a great number of clients, whom they
7 have maintained over the years, without raising suspicions. As a professional
8 campaign treasurer, D&A functioned as a banker and accountant, which involved
9 keeping track of all of the incoming and outgoing funds and following state and
10 federal guidelines for campaign finance reporting. Professional campaign
11 treasurers typically have full control of a candidate's political accounts.

12 29. In addition to serving as treasurer for numerous campaign committees
13 over the years, DURKEE and D&A managed the finances of dozens of non-profit
14 corporations which include

15 30. Before her arrest, DURKEE, through D&A, had signing authority
16 over 400 committee and non-profit bank accounts. Since 1972, she has worked
17 for 5 presidential campaigns and 4 gubernatorial campaigns. In addition,
18 DURKEE, through D&A, has worked as treasurer for numerous senate,
19 congressional, state and local candidates. DURKEE and D&A reportedly used
20 proprietary reporting software to handle mandatory electronic filings to both the
21 Federal Election Commission and the California Secretary of State.

22 31. It is reported that DURKEE gave no outward sign of lavish spending.
23 However, investigation now shows that DURKEE has transferred thousands of
24 dollars to herself and spent the same on others.

25 **B. DURKEE'S WORK FOR THE FEINSTEIN COMMITTEES**

26 32. DURKEE first worked as treasurer for Senator Diane Feinstein in
27 support of her 1992 campaign for Senate, and has worked on each reelection
28

1 campaign since. DURKEE was working for Senator Feinstein's campaign
2 committees at the time of her arrest.

3 33. As treasurer, one of DURKEE and D&A's principal roles was to
4 ensure that all federal campaign financial disclosures were made timely and
5 accurately. Over the two decades during which they served Senator Feinstein's
6 campaigns, DURKEE and D&A never failed to make those disclosures and always
7 represented that the accounting was accurate.

8 34. Another principal responsibility of DURKEE and D&A was to ensure
9 that all of the campaigns' expenditures were fully paid. Again, over the two
10 decades during which they served Senator Feinstein's campaigns, DURKEE and
11 D&A never failed to cover a requested campaign expenditure. Campaign bills
12 were always paid on time. As such, there was no indication that the Feinstein
13 Committees' balances were less than they were supposed to be.

14 35. As an additional safeguard, and as was standard practice, Senator
15 Feinstein's campaigns required DURKEE and D&A to provide campaign staff
16 with regular reports that detailed the receipts, expenditures, and balances, of each
17 of the Feinstein Committees' accounts. These regular reports showed receipts
18 consistent with internal fundraising records maintained by the Feinstein
19 Committees independent from DURKEE and D&A. Similarly, the expenditures
20 reported by DURKEE and D&A were always consistent with the expectations of
21 the Feinstein Committees' staff.

22 36. Furthermore, the Feinstein Committees' fundraisers had access to
23 DURKEE and D&A's online database of contributions. The records in that
24 database reconciled with both the regular campaign reports, and the Committees'
25 own records.

26 37. Accordingly, until the day of DURKEE's arrest, there was never any
27 indication that the Feinstein Committee's accounts, or any of the accounts
28

1 DURKEE has handled for Senator Feinstein's campaigns over the years, have held
2 less than they were supposed to, or less than what DURKEE and D&A reported.

3 38. DURKEE and D&A's false reporting masked the systematic
4 embezzlement of the Feinstein Committees' funds. As described in the following
5 section, DURKEE and D&A used their web of accounts – primarily held at
6 Defendant First California Bank – to siphon away the money; and it is only First
7 California Bank that had the knowledge to put a stop to the embezzlement.

8 **C. DURKEE'S THEFT FROM THE FEINSTEIN COMMITTEES**

9 39. Over the course of the past year, DURKEE – with the substantial
10 assistance of her co-Defendants – has used the Feinstein Committees' money to
11 cover her personal and business expenses, and to reimburse other elected officials'
12 campaign funds from which she had also embezzled. Examples of the scam
13 include the following:

14 40. On March 10, 2011, DURKEE, through D&A, transferred \$17,000.00
15 into a D&A account number xxx1251 (First California Bank), from the Feinstein
16 for Senate Merchant Account, also at First California Bank. This transfer was not
17 authorized or otherwise necessary or appropriate.

18 41. On May 3, 2011, DURKEE, through D&A, transferred \$6,000 into
19 D&A account number xxx1251 at First California Bank, from a Feinstein for
20 Senate Merchant Account, also at First California Bank. On May 27, 2011
21 DURKEE, through D&A, transferred \$4,000 into D&A account number xxx1251
22 at First California Bank, from a Fund for the Majority account, also at First
23 California Bank.

24 42. On May 2, 2011 DURKEE, through D&A, transferred \$6,000 into
25 D&A account number xxx1251 at First California Bank, from a Feinstein for
26 Senate Account, also at First California Bank.

27 43. In order to conceal these unauthorized transactions, DURKEE,
28 through D&A, systematically and intentionally misrepresented the balances and

1 transactions of the Feinstein Committees' accounts in Profit & Loss ("P&L")
2 statements and account summaries prepared by DURKEE, LEMCKE, and others
3 at D&A, for Senator Feinstein and her campaign staff.

4 44. In a P&L statement dated May 27, 2011, covering the period May 1,
5 2011 to May 27, 2011, Defendants represented that the Feinstein for Senate
6 account had total income of \$118,876.11, and total expenses of \$34,853.31. In
7 actuality, at that time, the account had an ending balance of only \$51,072.15, and
8 total expenses of \$193,671.65. Among those expenses was an unauthorized
9 \$35,000 wire transfer to account number xxx1251, a D&A account at First
10 California Bank.

11 45. In addition, during the same period of time in May 2011, the
12 following checks totaling \$124,000, and all unauthorized, were issued out of the
13 Plaintiffs' account, on information and belief, under DURKEE's signature:

| DATE | CHECK NUMBER | AMOUNT |
|---------|--------------|----------|
| 5/2/11 | 50304 | \$10,000 |
| 5/3/11 | 55008 | \$10,000 |
| 5/11/11 | 55009 | \$24,000 |
| 5/16/11 | 55010 | \$20,000 |
| 5/23/11 | 55011 | \$40,000 |
| 5/27/11 | 55012 | \$20,000 |

21 46. Similarly, in a P&L statement dated August 4, 2011, Defendants
22 represented that on July 30, 2011, the Feinstein for Senate account had a balance
23 of \$2,455,076.83. In a detailed P&L statement for the period covering June 30,
24 2011 to July 28, 2011, the Defendants represented a total income of \$179,452.33,
25 and total expenses of \$39,111.32. There was an unauthorized check issued out of
26 the account in the amount of \$35,000 (check # 55015), on July 18, 2011.

27 47. In actuality, on July 29, 2011, the account had an ending balance of
28 only \$356,250.47, and total expenses of \$177,360.25. Among those expenses

1 were two unauthorized wire transfers of \$30,000 and \$50,000 to account number
2 xxxxxxxx2092, which is an account not affiliated with Plaintiffs in any way.

3 48. In a Balance Summary dated July 2, 2011, Defendants represented
4 that the Feinstein for Senate account had a balance of \$2,312,402.47. In actuality,
5 on June 30, 2011, the account had an ending balance of \$266,424.67, and total
6 expenses of \$134,303.22. Among those expenses were the following two checks,
7 totaling \$75,000, neither of which was authorized:

| 8 DATE | CHECK NUMBER | AMOUNT |
|-----------|--------------|----------|
| 9 6/1/11 | 55013 | \$50,000 |
| 10 6/6/11 | 55014 | \$25,000 |

11 49. In sum, DURKEE appears to have treated Plaintiffs' accounts in the
12 same way she treated dozens of others, including Assembly members' campaign
13 accounts, as detailed in the Federal Bureau of Investigation's ("FBI") Criminal
14 Complaint against DURKEE.

15 50. According to the affidavit of FBI Special Agent Reginald L.
16 Coleman, DURKEE, through D&A,

17 transferred money from her clients' bank accounts to her firm's bank
18 accounts without her clients' knowledge or authorization. It also
19 appeared that DURKEE refunded a portion of the misappropriated
money when needed to cover checks or when misappropriations had
been detected.

20 DURKEE made such unauthorized transactions and misappropriations on a
21 regular basis, and did not report the transactions on forms required by the
22 California Secretary of State for campaign funds.

23 51. According to the FBI's investigation, the moneys transferred by
24 DURKEE from client accounts "have been used to pay her personal expenses,
25 including mortgage payments and American Express charges, as well as
26 business expenses."

27
28 ///

1 52. According to the criminal complaint, DURKEE admitted to the FBI,
2 "that she had been misappropriating her clients' money for years and that
3 forms she filed with the state were false."

4 53. With respect to Assemblyman Jose Solorio, the criminal complaint
5 reveals dozens of unauthorized transactions, following a pattern nearly identical to
6 that seen in Plaintiffs' accounts. For example,

7 on approximately October 1, 2010, a cashier's check made
8 payable to Solorio for Assembly 2010 in the amount of
9 \$300,000 was deposited into an account for D&A, number
10 xxxx83658, at City National Bank. . . . The source of the
\$300,000 cashier's check appears from bank records to be
from a money market account in the name of Solorio for
Assembly 2010 held at First California Bank.

11 54. Within days of the deposit, DURKEE misappropriated much of the
12 \$300,000 to pay her own expenses, and to cover misappropriations from other
13 accounts. Specifically, a check signed by DURKEE was issued from the Solorio
14 money market account for \$125,000, and payable to the Committee to Re-Elect
15 Loretta Sanchez; and four checks, for \$32,000, \$21,000, \$25,000, and \$15,000,
16 signed by DURKEE, were issued from the Solorio money market account and
17 deposited into D&A's business account.

18 55. The \$32,000 check taken from the Solorio money market account was
19 deposited into a D&A account at First California Bank, account number xxx1251.
20 From that account, DURKEE issued a check for \$36,000, payable to D&A, and
21 deposited the funds,

22 into a D&A account at First California Bank, account
23 number xxx0865. From there, \$30,000 was withdrawn in
24 the form of a check apparently signed by KINDE DURKEE
made payable to D&A and marked for 'payroll.' The
\$30,000 check was deposited into First California Bank
account number xxx9123."

25
26 56. According to the FBI, the \$30,000 was used by DURKEE to make her
27 payroll.

57. Another of the checks originating from the \$300,000 of Assemblyman Solorio's funds, for \$25,000, was used by DURKEE to pay credit card debts. According to the FBI, the \$25,000 check to D&A referenced above was subsequently deposited into First California Bank, account number xxx0865, on approximately October 4, 2010, and two withdrawals were made to pay American Express, one in the amount of \$16,854.76 and another in the amount of \$679.03. The payment for \$16,854.76 paid for a bill which included charges from a variety of different entities.

58. Another large deposit into the Solorio for Assembly-2010 fund, during the same time frame, had a similar fate. According to the FBI, on approximately October 8, 2010, a cashier's check made payable to Solorio for Assembly 2010 in the amount of \$377,181.24 was deposited into an account for D&A, number xxxx83658, at City National Bank. The source of the cashier's check for \$377,181.24 appears to be from a money market account in the name of Solorio for Assembly 2010 held at First California Bank.

59. According to the FBI, a number of checks were issued from the D&A account, number xxxx83658, into which the \$377,181.24 was deposited: one check for \$45,000 dated October 7, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE; a check for \$45,000 dated October 7, 2010 and payable to Committee to Re-Elect Loretta Sanchez; a check for \$60,000 dated October 8, 2010 and payable to Beth Krom for Congress; a check for \$40,000 dated October 8, 2010 and payable to Susan Davis for Congress; a check for \$25,000 dated October 11, 2010 and payable to Merchants Account, that was deposited into D&A account number xxx1251, along with numerous other checks to unknown accounts.

60. The FBI found numerous checks issued into D&A accounts, the funds from which DURKEE immediately used to cover personal expenses.

1 September 30, 2010 reported that there was cash-on-hand in the amount of
2 \$729,135.56. Bank records for Solorio for Assembly 2010, however, show that
3 the actual balance as of September 30, 2010 was only \$33,175.81.

4 65. This report was subsequently amended by filings in November 2010,
5 and in none of the amended reports was there any mention of the checks in the
6 amount of \$300,000 and \$377,000.

7 66. Based on its investigation, the FBI concluded that KINDE DURKEE
8 devised a material scheme to defraud Jose Solorio and the Solorio for Assembly
9 2010 campaign, and obtained money from them by means of materially false and
10 fraudulent pretenses, representations, and promises.

11 67. As alleged above, DURKEE and her co-Defendants misappropriated
12 funds from Plaintiffs in the same manner as described by the FBI with respect to
13 other politicians' and non-profits' accounts.

14 **D. FIRST CALIFORNIA BANK HAD KNOWLEDGE OF**
15 **DURKEE'S SCHEME AND KNOWINGLY PROVIDED**
16 **SUBSTANTIAL ASSISTANCE**

17 68. A fraud of the scale alleged herein could not have occurred, and did
18 not occur, without the knowing involvement of First California Bank. In
19 exchange for fees and profits, First California Bank intentionally ignored dozens
20 of red flags, ignored its duties and obligations under state and federal law, and
21 allowed DURKEE to perpetrate the scheme.

22 **1. First California Bank Intentionally Ignored Multiple Red**
23 **Flags and Had Knowledge of the Fraud**

24 69. DURKEE and D&A maintained multiple million-dollar plus accounts
25 with First California Bank, many of them on behalf of well-known political figures
26 in California. DURKEE and D&A used a single branch of First California Bank
27 to conduct its fraudulent operations. That branch office was located at 1888
28

1 Century Park East, Suite. 110 in Los Angeles, California. The manager of that
2 branch was and is Victor Jimenez, who knew DURKEE and D&A personnel well.

3 70. The staff and managers of that branch knew of DURKEE and D&A's
4 misconduct, yet allowed it to continue, and assisted in it, because the accounts
5 DURKEE and D&A handled held millions of dollars and generated thousands of
6 dollars in transaction and overdraft fees for the Bank. DURKEE ensured the
7 branch's cooperation by lavishing the bank with profits.

8 71. Motivated by these profits, the Bank ignored its knowledge of
9 DURKEE and D&A's misconduct, which was evident to the Bank based on basic
10 industry standards and its duty of care under California law.

11 72. Those basic industry standards are reflected in federal law that
12 requires banks to review accounts and transactions for suspicious circumstances,
13 and report such suspicious transactions to the Financial Crimes Enforcement
14 Network. Specifically, 12 CFR 208.62 requires charter banks such as First
15 California Bank to monitor and report suspicious activity through submission of a
16 Suspicious Activity Report ("SAR"), any time the bank suspects that it "was used
17 to facilitate a criminal transaction," or that a transaction "involve[s] potential
18 money laundering or violations of the Bank Secrecy Act."

19 73. Monitoring and reporting suspicious activity is a critical and routine
20 function of modern banks, and guidelines for identifying suspicious activity
21 abound. For example, the Bank Secrecy Act/Anti-Money Laundering
22 Examination Manual issued by the Federal Financial Institutions Examination
23 Council publishes a list of "examples of potentially suspicious activities that
24 should raise red flags for further investigation to determine whether the
25 transactions or activities reflect illicit activities." First California Bank failed to
26 adhere to Bank regulations that require an ongoing and regular review of accounts
27 for suspicious activities that include:

74. **“Funds transfer activity is unexplained, repetitive, or shows unusual patterns.”** As described above, DURKEE regularly made highly questionable and suspicious fund transfers among the dozens of accounts she maintained at First California Bank, including frequent transfers out of client accounts and into D&A’s accounts, and frequent transfers between client accounts to cover overdrafts.

75. **“Payments or receipts with no apparent links to legitimate contracts, goods, or services are received.”** First Bank of California allowed DURKEE to make regular payments between client accounts, with only one apparent – and illegal – reason: to cover overdrafts.

76. "Funds transfers are sent or received from the same person to or from different accounts." As described above, DURKEE made multiple transfers from client accounts, on the same day, to D&A accounts. For example, on July 5, 2011, DURKEE made two wire transfers from Feinstein for Senate account number xxx9311, one for \$30,000, and the other for \$50,000, both to account xxxxxxxx2092, which is not affiliated with Plaintiffs in any way. Three weeks after the transfers, on July 28, 2011, DURKEE transferred \$80,000 back into account xxx9311 from account xxxxxxxx2092. This movement of money was purely for the purpose of artificially inflating the balance of account xxxxxxxx2092, and any monitoring by a bank officer would have alerted the Bank to the transactions' illegality.

77. **“Unusual transfers of funds occur among related accounts or among accounts that involve the same or related principals.”** As described in prior paragraphs, DURKEE regularly transferred funds among the various accounts at First California Bank that she controlled, for no apparent legitimate reason. As one example, on September 30, 2010, DURKEE deposited a check for \$36,000 misappropriated from Assemblyman Solorio’s account into a D&A account at First California Bank, account number xxx0865. The same day,

DURKEE issued a check from account number xxx0865 in the amount of \$30,000, made out to D&A, and deposited that check in yet another First California Bank D&A account, account number xxx9123. There could be no legitimate reason for such transfers, and bank officers knew so.

78. "A customer or group tries to persuade a bank employee not to file required reports or maintain required records. . . . A business or customer asks to be exempted from reporting or recordkeeping requirements." As discussed in this section, First California Bank failed to follow its own internal guidelines, industry standards, and federal law regarding the monitoring and reporting of suspicious account activity. Whether the Bank did so at the request of DURKEE, or of its own accord, it violated its duties.

79. "Many funds transfers are sent in large, round dollar, hundred dollar, or thousand dollar amounts." A vast majority of the withdrawals and checks issued from the Feinstein Committees' accounts at DURKEE's request were sent in large, round dollar, thousand dollar amounts, as exemplified in the following chart:

| ACCOUNT NO. xxx0607 | | |
|---------------------|--------------|---------|
| DATE | CHECK NUMBER | AMOUNT |
| 08/09/10 | 10131 | \$5,000 |
| 08/18/10 | 10132 | \$3,000 |
| 08/18/10 | 20014 | \$5,000 |
| 09/08/10 | 10133 | \$5,000 |
| 10/01/10 | 10136 | \$5,000 |
| 10/12/10 | 10134 | \$5,000 |
| 10/15/10 | 10139 | \$5,000 |
| 10/18/10 | 10142 | \$5,000 |
| 10/19/10 | 10140 | \$5,000 |
| 10/26/10 | 10143 | \$6,000 |
| 11/12/10 | 20016 | \$5,000 |

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| 11/19/10 | 10144 | \$3,000 |
| 11/30/10 | 20017 | \$5,000 |
| 12/06/10 | 20018 | \$5,000 |
| 12/17/10 | 20019 | \$10,000 |
| 12/31/10 | 10146 | \$3,000 |
| 1/19/11 | 10147 | \$3,000 |
| 2/23/11 | 10149 | \$3,000 |
| 3/14/11 | Wire transfer | \$1,000 |
| 3/23/11 | 10150 | \$3,000 |
| 3/23/11 | 21000 | \$4,000 |
| 4/18/11 | 21001 | \$5,000 |
| 4/22/11 | 10153 | \$3,000 |
| 5/02/11 | 21003 | \$10,000 |
| 5/18/11 | 10156 | \$3,000 |
| 5/27/11 | Wire transfer | \$4,000 |
| 6/01/11 | 10155 | \$5,000 |
| 6/17/11 | 10158 | \$4,500 |
| 7/08/11 | 10162 | \$2,000 |
| 7/07/11 | 10166 | \$2,000 |
| 7/08/11 | 10164 | \$2,000 |
| 7/11/11 | 10165 | \$2,000 |
| 7/14/11 | 10160 | \$2,000 |
| 7/19/11 | 10159 | \$2,000 |
| 7/19/11 | 10163 | \$2,000 |
| 7/28/11 | 10161 | \$2,000 |
| 8/17/11 | 21002 | \$25,000 |
| 8/30/11 | 10169 | \$9,000 |

ACCOUNT NO. xxx7787

| DATE | CHECK NUMBER | AMOUNT |
|----------|--------------|----------|
| 12/08/10 | 1001 | \$25,000 |
| 12/09/10 | 1002 | \$10,000 |

COMPLAINT

11/19/10 10144 \$3,000

| | | | |
|----|----------|---------------|-----------|
| 1 | 12/17/10 | 1003 | \$10,000 |
| 2 | 2/10/11 | 1004 | \$25,000 |
| 3 | 2/22/11 | 1005 | \$10,000 |
| 4 | 2/28/11 | 1006 | \$3,000 |
| 5 | 2/28/11 | 1007 | \$15,000 |
| 6 | 3/10/11 | Wire transfer | \$17,000 |
| 7 | 3/14/11 | Wire transfer | \$6,000 |
| 8 | 3/21/11 | 1008 | \$4,000 |
| 9 | 3/28/11 | 1010 | \$18,000 |
| 10 | 3/30/11 | 1009 | \$11,000 |
| 11 | 4/06/11 | 5102 | \$14,000 |
| 12 | 4/18/11 | 5103 | \$5,000 |
| 13 | 4/26/11 | 5104 | \$5,000 |
| 14 | 4/27/11 | 5105 | \$10,000 |
| 15 | 5/2/11 | 5106 | \$10,000 |
| 16 | 5/3/11 | Wire transfer | \$6,000 |
| 17 | 5/3/11 | 5107 | \$5,000 |
| 18 | 5/11/11 | 5108 | \$12,000 |
| 19 | 5/23/11 | 5109 | \$10,000 |
| 20 | 8/2/11 | Wire transfer | \$100,000 |

| | | | |
|----|------------------------|--------------|----------|
| 19 | ACCOUNT NUMBER xxx9311 | | |
| 20 | DATE | CHECK NUMBER | AMOUNT |
| 21 | 08/09/10 | 30963 | \$10,000 |
| 22 | 08/09/10 | 30964 | \$10,000 |
| 23 | 08/09/10 | 30965 | \$10,000 |
| 24 | 08/10/10 | 30966 | \$12,000 |
| 25 | 08/12/10 | 30967 | \$10,000 |
| 26 | 08/13/10 | 30968 | \$20,000 |
| 27 | 08/18/10 | 30969 | \$5,000 |
| 28 | 08/18/10 | 10947 | \$3,000 |
| | 08/20/10 | 10941 | \$1,000 |

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|----|----------|-------|-----------|
| 1 | 08/30/10 | 30970 | \$10,000 |
| 2 | 09/07/10 | 30971 | \$8,000 |
| 3 | 09/20/10 | 20959 | \$20,000 |
| 4 | 09/23/10 | 10954 | \$100,000 |
| 5 | 09/27/10 | 30972 | \$14,000 |
| 6 | 09/29/10 | 20954 | \$25,000 |
| 7 | 10/08/10 | 20955 | \$40,000 |
| 8 | 10/08/10 | 20956 | \$4,000 |
| 9 | 10/15/10 | 10959 | \$10,000 |
| 10 | 10/18/10 | 10960 | \$3,000 |
| 11 | 10/25/10 | 20957 | \$20,000 |
| 12 | 11/04/10 | 20958 | \$15,000 |
| 13 | 11/08/10 | 20960 | \$8,000 |
| 14 | 11/09/10 | 20961 | \$10,000 |
| 15 | 11/12/10 | 20963 | \$5,000 |
| 16 | 11/16/10 | 10961 | \$2,600 |
| 17 | 11/19/10 | 10964 | \$3,000 |
| 18 | 11/22/10 | 20964 | \$10,000 |
| 19 | 11/23/10 | 20965 | \$20,000 |
| 20 | 11/30/10 | 20966 | \$5,000 |
| 21 | 12/03/10 | 20967 | \$40,000 |
| 22 | 12/09/10 | 20968 | \$5,000 |
| 23 | 12/17/10 | 20969 | \$15,000 |
| 24 | 12/23/10 | 20970 | \$13,000 |
| 25 | 12/28/10 | 10965 | \$3,200 |
| 26 | 12/31/10 | 10969 | \$3,000 |
| 27 | 02/01/11 | 20971 | \$24,000 |
| | 02/17/11 | 50285 | \$10,000 |
| | 02/22/11 | 50286 | \$10,000 |
| | 02/23/11 | 50287 | \$13,000 |
| | 02/23/11 | 10977 | \$3,000 |

| | | |
|----------|---------------|----------|
| 02/24/11 | 50288 | \$10,000 |
| 03/02/11 | Wire transfer | \$18,000 |
| 03/10/11 | Wire transfer | \$50,000 |
| 03/14/11 | Wire transfer | \$6,000 |
| 03/14/11 | 50289 | \$6,000 |
| 03/21/11 | 50290 | \$27,000 |
| 03/23/11 | 10980 | \$3,000 |
| 03/24/11 | 50292 | \$25,000 |
| 03/28/11 | 50294 | \$10,000 |
| 03/30/11 | 50295 | \$2,000 |
| 03/31/11 | 50296 | \$5,000 |
| 04/06/11 | 50291 | \$25,000 |
| 04/06/11 | 50291 | \$25,000 |
| 04/07/11 | 10997 | \$27,500 |

80. "Suspicious movements of funds occur from one bank to another, and then funds are moved back to the first bank." DURKEE frequently moved the same funds between First California Bank and City National Bank. For example, the criminal complaint against DURKEE describes an unauthorized transfer of \$300,000 from Assemblyman Solorio's account at First California Bank, to a D&A account at City National Bank. Within days of that transfer, most of the \$300,000 was transferred back to various other of DURKEE's accounts at First California Bank. A similar pattern occurred with subsequent misappropriation of a \$377,181 check.

• **Repeatedly overdrawing accounts and "bouncing" checks.** One of the most obvious red flags was DURKEE's repeated overdrawing of accounts. Over the course of one year alone, on the Feinstein Committees' accounts, DURKEE overdrew the accounts, incurring overdraft fees, on 68 occasions. This alone would require an internal review of the activity. First California routinely covered these checks by simply charging the account a "NSF-OD Charge". This

Introduction

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ACCOUNT [REDACTED] 9311

| DATE | DESCRIPTION | AMOUNT |
|----------|---------------------------------|--------|
| 04/20/11 | NSF-OD CHARGE CHECK #0000010998 | 35.00 |
| 04/20/11 | NSF-OD CHARGE CHECK #0000010996 | 35.00 |
| 04/22/11 | NSF-OD CHARGE CHECK #0000050302 | 35.00 |
| 04/22/11 | NSF-OD CHARGE CHECK #0000011003 | 35.00 |

- **Check kiting (using circular payments among a web of accounts to cover payments made on overdrawn accounts, masking insufficient funds).**

DURKEE so thoroughly and rapidly depleted her clients' funds that she constantly had to shuffle money between accounts in order to prevent checks from bouncing. For example, as described above, on July 5, 2011, DURKEE made two wire transfers from Feinstein for Senate account number xxx9311, one for \$30,000, and

1 the other for \$50,000, both to account xxxxxxxx2092, which is not affiliated with
2 Plaintiffs in any way. Three weeks after the transfers, on July 28, 2011, DURKEE
3 transferred \$80,000 back into account xxx9311 from account xxxxxxxx2092.
4 Similarly, on August 31, 2011, DURKEE transferred \$100,000 out of Feinstein for
5 Senate account number xxx7787 and into unaffiliated account number
6 xxxxxxxx8333. The very same day, DURKEE transferred the \$100,000 back into
7 the Feinstein for Senate account number xxx7787 from account number
8 xxxxxxxx8333.

9 **2. First California Bank Violated Office of Controller**
10 **Guidelines For Check-Kiting Detection**

11 81. The Office of the Controller of the Currency ("OCC") publishes
12 detailed guidelines to assist banks in detecting check kiting schemes such as this.
13 According to the OCC, examples of suspicious circumstances which may indicate
14 a check-kiting scheme include:

15 • **"Several accounts with similar names, owned or controlled by the**
16 **same individuals."** As detailed above, DURKEE controlled dozens of accounts
17 held at First California Bank.

18 • **"Regular or excessive drawings against uncollected funds."** As
19 described above, DURKEE regularly drew on funds that were deposited the same
20 day, or not yet even deposited.

21 • **"Frequent daily negative ending balances or overdrafts that**
22 **eventually clear or are covered in a short time frame."** DURKEE incurred
23 overdraft fees on 68 items drawn on the three Feinstein Committee accounts in just
24 one year. Notably, First California Bank does not appear to have prevented her
25 from doing so even once during that time. It is standard banking practice for
26 branch managers to review all overdrafts on the branch's accounts on at least a
27 daily basis. Accordingly, First California Bank knew of this pattern of overdrafts,
28 yet allowed DURKEE to continue overdrawing accounts, unabated.

1 • **"Identifiable patterns of transactions such as deposits, transfers**
2 **between accounts, withdrawals, and wire transfers, often with similar or**
3 **increasing amounts."** As illustrated in the charts above, DURKEE regularly
4 withdrew round thousand dollar amounts from the Feinstein Committee accounts.

5 • **"Frequent, large deposits drawn on the same institution."** Again,
6 DURKEE shuffled money between her accounts in large, round thousand dollar
7 amounts.

8 • **"Deposits drawn on other institutions by the same maker or**
9 **signer."** As described above, DURKEE transferred funds between City National
10 Bank and First California Bank on a regular basis.

11 • **"Large debits and credits of even dollar amounts."** This was done
12 on a regular basis as detailed above.

13 • **"Frequent check withdrawals to the same institution, with the**
14 **maker listed as payee."** DURKEE frequently signed checks to D&A, and
15 deposited those checks in D&A accounts held at First California Bank.

16 • **"A low average daily balance in relation to deposit activity."**
17 Despite receiving regular deposits from donors to the Feinstein Committees, the
18 Feinstein Committee accounts simply never grew, as DURKEE constantly tapped
19 them for her own wrongful use.

20 82. In sum, there were dozens of transactional improprieties, every
21 month, done with the FULL KNOWLEDGE of First California Bank. Yet, as
22 described in the following section, First California Bank failed to report DURKEE
23 or shut down her accounts. Instead, First California continued to actively provide
24 banking assistance to DURKEE and D&A as they raided their clients' coffers, all
25 in the name of profit and greed.

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1 3. First California Bank Violated Federal Financial
2 Institutions Examination Council's Guidelines by
3 Intentionally Failing to Report DURKEE or Halt Her
4 Activities

5 83. Had First California Bank complied with its duties under California
6 law, as mirrored in federal law (12 CFR 208.62), and the guidelines described in
7 the foregoing, it would have monitored and reported DURKEE and D&A's
8 wrongful activities, and would have ceased providing assistance to DURKEE and
9 D&A in furtherance of their scheme.

10 84. Such monitoring and reporting of suspicious financial transactions,
11 especially in the post-September 11 era, is an important and routine part of modern
12 banking. Banks are even shielded from liability for reporting. Specifically, 31
13 U.S.C. section 5318(g)(3) provides complete immunity from any claims under
14 state or federal law for reporting, stating, in pertinent part, that anyone reporting
15 suspicious activity "shall not be liable to any person under any law or regulation of
16 the United States, any constitution, law, or regulation of any State or political
17 subdivision of any State, or under any contract or other legally enforceable
18 agreement (including any arbitration agreement), for such disclosure or for any
19 failure to provide notice of such disclosure to the person who is the subject of such
20 disclosure or any other person identified in the disclosure."

21 85. Simply stated, First California Bank had no legitimate reason not to
22 report DURKEE and D&A's activities, except for the continued profit to the Bank.

23 86. Moreover, reporting is simple. The federal SAR form (FinCEN Form
24 109), even provides straightforward instructions, including a section entitled
25 "When To File A Report," and can be filed electronically. (See Exhibit A). The
26 SAR reports provide the federal Financial Crimes Enforcement Network
27 ("FinCEN") with critical and detailed information. For example, the SAR form
28

1 provides the following guidance for completing the "Narrative" portion of the
2 form:

- 3 • "Describe conduct that raised suspicion.
- 4 • "Explain whether the transaction(s) was completed or only attempted.
- 5 • "Describe supporting documentation and retain such documentation
6 for your file for five years.
- 7 • "Indicate a time period, if it was a factor in the suspicious
8 transaction(s). . . .
- 9 • "Retain any admission or explanation of the transaction(s) provided
10 by the subject(s) or other persons. Indicate when and to whom it was given.
- 11 • "Retain any evidence of cover-up or evidence of an attempt to
12 deceive federal or state examiners, or others.
- 13 • "Indicate where the possible violation of law(s) took place (e.g., main
14 office, branch, agent location, etc.).
- 15 • "Indicate whether the suspicious activity is an isolated incident or
16 relates to another transaction. . . .
- 17 • "Indicate any additional account number(s), and any foreign bank(s)
18 account numbers which may be involved in transfer of money.
- 19 • "Identify any employee or other individual or entity (e.g., agent)
20 suspected of improper involvement in the transaction(s).

21 (Exhibit A).

22 87. Had First California Bank accurately completed and submitted SARs
23 in connection with some or all of DURKEE and D&A's suspicious transactions,
24 the scheme would have been stopped in its tracks.

25 88. Even absent suspicious activities, banks are required to complete a
26 Currency Transaction Report ("CTR") for submission to FinCEN for any
27 transaction over \$10,000.

1 4. First California Failed to Follow Its Own Internal
2 Operations Manuals and Shielded DURKEE's Activities
3 from the California Department of Financial Institutions

4 89. In order to ensure compliance with state and federal law, First
5 California maintains internal operations manuals that provide additional guidance
6 to managers and branch staff regarding suspicious transactions. Standard industry
7 practices dictate that banks have four types of programs in place, known in the
8 industry as the "four pillars," to prevent fraud. Those four pillars are: (a) internal
9 controls to ensure ongoing compliance; (b) independent testing of compliance; ©
10 designation of an personnel responsible for compliance; and (d) training on
11 potentially fraudulent transactions and money laundering activities. The
12 requirements for these pillars have grown increasingly demanding over the past
13 decade, particularly as they relate to recognition of suspicious transactions.

14 90. The Bank Secrecy Act requires banks to adopt internal written
15 policies to monitor and ensure compliance with the Act. The OCC further
16 recommends that the following internal controls be implemented to detect and
17 prevent fraud:

18 • "Officer approval on drawings against uncollected funds, overdrafts,
19 and wire transfers. Such authority should be strictly enforced and not exceed an
20 individual's lending authority.

21 • "Daily reports on drawings against uncollected funds, overdrafts,
22 large items, and significant balance changes.

23 • "Designated individual to regularly review internal reports to spot
24 anomalous conduct and to ensure proper investigation when warranted.

25 • "Secondary level of administrative control that is distinct from other
26 lending functions to promote objectivity when granting significant drawings
27 against uncollected funds or overdrafts.

1 • "Regular overdraft activity reports to the board or an approved
2 committee thereof.

3 • "Periodic review through an independent audit function to assess and
4 report on the adequacy of all established internal controls in this area."

5 91. According to First California Bank's latest annual filing with the
6 SEC, it maintains internal controls to protect against fraud. Specifically, the Bank
7 told the SEC and Bank Examiners:

8 We are subject to certain operational risks, including, but not
9 limited to, data processing system failures and errors, **customer**
10 **or employee fraud**, security breaches of our computer systems
11 and catastrophic failures resulting from terrorist acts or natural
12 disasters. **We maintain a system of internal controls to**
13 **mitigate against such occurrences** and maintain insurance
coverage for such risks that are insurable, but should such an
event occur that is not prevented or detected by our internal
controls and uninsured or in excess of applicable insurance
limits, it could have a significant adverse impact on our
business, financial condition or results of operations.

14 92. The transfers and activities undertaken by DURKEE and her
15 associates with the Feinstein Committees' accounts at First California Bank had
16 many of the features that should have triggered such internal controls, and SAR
17 and CTR reporting, yet First California Bank never reported DURKEE and D&A's
18 transactions. First California Bank **knowingly ignored and violated its own**
19 **internal policies**, and federal law, that allowed DURKEE and D&A to engage in
20 the highly suspicious and improper transactions described above. First California
21 Bank had the duty and ability to terminate its assistance of DURKEE and D&A's
22 fraud, and to terminate DURKEE and D&A's accounts.

23 93. Moreover, First California Bank failed to report DURKEE and
24 D&A's activities to the California Department of Financial Institutions. First
25 California Bank also concealed DURKEE and D&A's activities, and the dozens of
26 red flags raised by those activities, from the annual examinations of the Bank
27 conducted by the Department of Financial Institutions pursuant to Section 1900 of
28 the California Financial Code.

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dozens of accounts, over several years. First California Bank knew that DURKEE and D&A were defrauding dozens of clients, including Plaintiffs.

96. First California Bank allowed this conduct to continue because the accounts DURKEE and D&A controlled were a significant generator of fees for First California Bank, and provided funds that First California Bank could invest at a profit for as long as the funds sat in the accounts.

97. Despite its knowledge of the fraud, First California Bank provided substantial assistance to DURKEE and D&A in furtherance of their scheme to defraud and steal from Plaintiffs, other public officials, and non-profits across California. First California Bank failed to comply with any of its responsibilities or obligations with respect to the Feinstein Committees' accounts. Rather, First California Bank was at the center of DURKEE's fraudulent scheme, and far from shutting down the scheme or halting its own involvement in that scheme, it facilitated the scheme by providing DURKEE and D&A with extraordinary access to its employees, infrastructure and banking services.

98. First California Bank's assistance allowed DURKEE and D&A to steal millions of dollars from their clients, including Plaintiffs, other elected officials, and non-profits across California and the country. In another example of First California Bank's knowing facilitation of the embezzlement, the Bank reportedly allowed DURKEE to electronically transfer funds in and out of a non-profit organization's account despite the fact that DURKEE did not have signature authority on the account. Without the knowing cooperation of Bank management, DURKEE could not have done so.

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1 E. FIRST CALIFORNIA BANK ACKNOWLEDGES THAT
2 DURKEE MISAPPROPRIATED AND CO-MINGLED FUNDS.
3 YET REFUSES TO GIVE DURKEE CLIENTS ACCESS TO
4 THEIR OWN FUNDS

5 99. Just days after DURKEE's arrest, First California Bank sent Plaintiffs
6 a letter acknowledging that it had allowed DURKEE to misappropriate and co-
7 mingle client funds. The letter states, in pertinent part: "the account balances
8 shown on [the Bank's] records . . . may include funds belonging to other clients
9 of Durkee which were comingled by Durkee with your funds."

10 100. Despite this acknowledgment, the Bank refused to provide Plaintiffs
11 with what little remained of their funds unless Plaintiffs agreed to fully indemnify
12 the Bank. Simply put, the Bank is holding Plaintiffs' funds hostage.

13 101. In a subsequent letter, dated September 16, 2011, First California
14 Bank again acknowledged that it had allowed DURKEE to shuffle money between
15 the accounts to such an extreme degree that the proper balance of the accounts
16 simply cannot be determined. Specifically, it stated:

17 The more we investigated the situation, the more it
18 appears that Durkee had comingled funds belonging to various
19 different campaigns and organizations and had made transfers
20 between accounts on which Durkee had signing authority.

21 We concluded that there was a very high likelihood
22 that the balance credited to any given account did not
23 represent accurately the funds, if any, actually belonging to
24 the campaign or organization on the account. In certain
25 circumstances, it is apparent that account balances
26 contained funds that had previously been credited to non-
27 related accounts. **THESE CONDITIONS APPEARED TO**
28 **BE PERVASIVE IN THE DURKEE-CONTROLLED**
ACCOUNTS

(Exhibit B).

102. These "pervasive" conditions are precisely the type that led the Bank
to know of DURKEE's scheme years ago.

1 **VII. CAUSES OF ACTION**

2 **FIRST CAUSE OF ACTION**

3 **FRAUD AND DECEIT**

4 **(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,**
5 **and DOES 1-10)**

6 103. Plaintiffs incorporate by reference all of the previous allegations as
7 though fully set forth herein.

8 104. As alleged herein, Defendants DURKEE, D&A, FORGY, LEMCKE,
9 and DOES 1-50 provided Plaintiffs with fraudulent account summaries and profit
10 and loss statements, on a weekly or monthly basis, from at least August 2010 to
11 August 2011. Those fraudulent reports and statements misrepresented the amount
12 of withdrawals from the accounts and the account balances. The reports and
13 statements failed to disclose the unauthorized withdrawals from the accounts made
14 by Defendants to cover their own personal and business expenses, and to
15 reimburse other campaign funds for embezzled funds.

16 105. The wrongful acts and omissions on the part of Defendants, as herein
17 alleged, were made with the intent to induce Plaintiffs, and each of them, to
18 continue to utilize Defendants' services and entrust Defendants with campaign
19 contributions and other funds.

20 106. At all times alleged, Plaintiffs were ignorant of Defendants'
21 fraudulent intentions and, in the exercise of reasonable diligence, did not discover
22 or uncover their wrongdoing because Defendants, and each of them, intentionally
23 misreported the available balances, income, and expenses in weekly and monthly
24 statements. Furthermore, on information and belief, Defendants misappropriated
25 funds from other clients' funds when necessary to cover legitimate expenses that
26 needed to be paid from Plaintiffs' accounts.

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1 107. As a direct and legal result of said fraud, deceit, and/or concealment
2 on the part of Defendants, and each of them, Plaintiffs have been damaged in an
3 amount exceeding the jurisdictional minimum, according to proof.

4 108. The above-described fraud, deceit, and/or concealment on the part of
5 Defendants, and each of them, was intended to and did deprive Plaintiffs, and each
6 of them, of millions of dollars. These acts were accomplished by Defendants by
7 means of fraud, deceit, concealment, oppression, and/or malice and, as such,
8 warrant the imposition of exemplary and/or punitive damages as against
9 Defendants, and each of them.

10 109. WHEREFORE, Plaintiffs, and each of them, pray for judgment
11 against Defendants, and each of them, as set forth herein.

12 **SECOND CAUSE OF ACTION**

13 **CONVERSION**

14 **(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,**
15 **and DOES 1-10)**

16 110. Plaintiffs incorporate by reference all the allegations contained in the
17 Complaint as though fully set forth herein.

18 111. At all times alleged, Plaintiffs were the owners of the funds
19 maintained in the subject accounts, or had the right to possession of the funds that
20 were maintained in the accounts.

21 112. At all times alleged, Defendants DURKEE, D&A, FORGY,
22 LEMCKE, and DOES 1-50, and each of them, wrongly drew on Plaintiffs' funds
23 without authorization and without permission for their own personal and wrongful
24 use. Defendants, and each of them, were direct beneficiaries of the conversion as
25 they obtained financial benefits including, but not limited to, the payment of
26 personal and business debts and liabilities.

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1 113. As a legal result of the conversion by Defendants, Plaintiffs, and each
2 of them, suffered damages including, but not limited to, the amount of money
3 converted, as well as the time and money expended to recovery said wrongfully
4 converted funds including, but not limited to, attorneys' fees and costs.

5 114. Punitive damages should also be awarded pursuant to Civil Code
6 section 3294 as the conduct of Defendants, and each of them, was malicious,
7 oppressive and/or fraudulent, in conscious disregard for the rights of Plaintiffs.

8 115. WHEREFORE, the Plaintiffs, and each of them, pray for judgment
9 against Defendants, as set forth herein.

10 **THIRD CAUSE OF ACTION**

11 **BREACH OF CONTRACT**

12 **(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,**
13 **and DOES 1-5)**

14 116. Plaintiffs incorporate by reference all the allegations contained in the
15 Complaint as though fully set forth herein.

16 117. Agreements were entered into between Defendants and Plaintiffs for
17 treasury services on behalf of Plaintiffs.

18 118. Plaintiffs fully performed all conditions, covenants, and promises
19 required of them under the Agreements.

20 119. Pursuant to the Agreements, Defendants agreed to process
21 contributions and other income to Plaintiffs, process legitimate expense requests
22 from Plaintiffs' accounts, and provide Plaintiffs' with accurate profit and loss
23 detail and account summaries for each of Plaintiffs' accounts on a regular basis.
24 In return, Plaintiffs paid Defendants for their work.

25 120. In violation of their promises and obligations under the Agreements,
26 Defendants, and each of them, breached their obligations to Plaintiffs by, among
27 other things, making unauthorized withdrawals from the Accounts for their own
28

benefit; converting Plaintiffs' funds for their own use; and failing to provide accurate account summaries and profit and loss statement.

121. As a direct and legal result of Defendants' breach, Plaintiffs, and each of them, have been damaged in the amount exceeding the jurisdictional minimum, according to proof.

122. WHEREFORE, Plaintiffs pray for judgment against Defendants, and each of them, as set forth herein.

FOURTH CAUSE OF ACTION
BREACH OF THE IMPLIED COVENANT OF
GOOD FAITH AND FAIR DEALING
(As Against Defendants DURKEE, D&A, FORGY, LEMCKE,
and DOES 1-5)

123. Plaintiffs incorporate by reference all the allegations contained in the Complaint as though fully set forth herein.

124. As alleged herein, agreements were entered into between Defendants and Plaintiffs for treasury services on behalf of Plaintiffs.

125. Plaintiffs fully performed all conditions, covenants, and promises required of them under the Agreements.

126. Pursuant to the Agreements, Defendants agreed to process contributions and other income to Plaintiffs, process legitimate expense requests from Plaintiffs' accounts, and provide Plaintiffs' with accurate profit and loss detail and account summaries for each of Plaintiffs' accounts on a regular basis. In return, Plaintiffs paid Defendants for their services.

127. Implied in the Agreements was a covenant by Defendants that they would act in good faith and deal fairly with Plaintiffs, and each of them, and would not do anything to deprive Plaintiffs, and each of them, of the benefits of the Agreements.

1 128. In violation of the implied covenant of good faith and fair dealing,
2 Defendants, and each of them, made unauthorized withdrawals from the Accounts
3 for their own benefit; converted Plaintiffs' funds for their own use; and failed to
4 provide accurate account summaries and profit and loss statement.

5 129. As a direct and legal result of Defendants' breach, Plaintiffs, and each
6 of them, have been damaged in the amount exceeding the jurisdictional minimum,
7 according to proof.

8 130. WHEREFORE, Plaintiffs pray for judgment against Defendants, and
9 each of them, as set forth herein.

10 **FIFTH CAUSE OF ACTION**

11 **AIDING AND ABETTING FRAUD**

12 **(As Against Defendants FIRST CALIFORNIA BANK and DOES 5-10)**

13 131. Plaintiffs reallege and incorporate all the paragraphs of the
14 Complaint, as though fully set forth hereafter.

15 132. Defendants DURKEE, D&A, FORGY, LEMCKE, and DOES 5-10,
16 as discussed above, made material misrepresentations and omissions to Plaintiffs
17 regarding the status of the funds in accounts held at First California Bank and City
18 National Bank.

19 133. As set forth in the Complaint, First California Bank had **actual**
20 **knowledge** of the fraud being perpetrated on Plaintiffs by DURKEE and her
21 associates.

22 134. As set forth in this Complaint, First California Bank **substantially**
23 **assisted** DURKEE and her associates in perpetrating their fraud upon Plaintiffs.
24 Specifically, First California Bank assisted in the fraudulent scheme in several
25 ways including but not limited to the following.

- 26 a. Opening accounts for DURKEE and D&A and allowing them
27 to deposit Plaintiffs' monies via suspicious wire transfers;

- 1 b. Permitting DURKEE and D&A to commingle Plaintiffs'
- 2 monies in the accounts of other of Defendants' clients;
- 3 c. Allowing DURKEE and D&A to transfer large sums of
- 4 Plaintiffs' monies via suspicious wire transfers and checks to
- 5 D&A accounts;
- 6 d. Allowing DURKEE and D&A to misappropriate large sums of
- 7 Plaintiffs' monies to pay for hundreds of thousands of dollars
- 8 in personal and business expenses.

9 135. Without First California Bank's substantial assistance, DURKEE and
10 her associates would not have been able to defraud Plaintiffs.

11 136. As a result of DURKEE and D&A's fraud, and First California
12 Bank's assistance thereof, Plaintiffs suffered economic losses in an amount to be
13 proven at trial.

14 137. The wrongful acts of First California Bank were done maliciously,
15 oppressively, and with intent to defraud, and Plaintiffs and Class members are
16 entitled to punitive and exemplary damages in an amount to be ascertained
17 according to proof.

18 138. WHEREFORE, Plaintiffs pray for relief as set forth below.

19 SIXTH CAUSE OF ACTION

20 **AIDING AND ABETTING CONVERSION**

21 **(As Against Defendants FIRST CALIFORNIA BANK and DOES 5-10)**

22 139. Plaintiffs incorporate by reference all the allegations contained in the
23 Complaint as though fully set forth herein.

24 140. At all times alleged, Plaintiffs were the owners of the funds
25 maintained in the subject accounts, or had the right to possession of the funds that
26 were maintained in the accounts.

27 141. At all times alleged, Defendants DURKEE, D&A, FORGY,
28 LEMCKE, and DOES 1-5, and each of them, wrongly drew on Plaintiffs' funds

1 without authorization and without permission for their own personal and wrongful
2 use. Defendants, and each of them, were direct beneficiaries of the conversion as
3 they obtained financial benefits including, but not limited to, the payment of
4 personal and business debts and liabilities.

5 142. As set forth in this Complaint, First California Bank had actual
6 knowledge of the wrongful conversion of Plaintiffs' funds by DURKEE and her
7 associates.

8 143. As set forth in the complaint, First California Bank substantially
9 assisted DURKEE and her associates in wrongfully converting Plaintiffs' funds.
10 Specifically, First California Bank assisted in the conversion in several ways
11 including but not limited to the following.

- 12 a. Opening accounts for DURKEE and D&A and allowing them
13 to deposit Plaintiffs' monies via suspicious wire transfers;
- 14 b. Permitting DURKEE and D&A to commingle Plaintiffs'
15 monies in the accounts of other of Defendants' clients;
- 16 c. Allowing DURKEE and D&A to transfer large sums of
17 Plaintiffs' monies via suspicious wire transfers and checks to
18 D&A accounts;
- 19 d. Allowing DURKEE and D&A to misappropriate large sums of
20 Plaintiffs' monies to pay for hundreds of thousands of dollars
21 in personal and business expenses.

22 144. Without First California Bank's substantial assistance, DURKEE and
23 her associates would not have been able to convert Plaintiffs' funds.

24 145. As a result of DURKEE and D&A's conversion, and First California
25 Bank's assistance thereof, Plaintiffs suffered economic losses in an amount to be
26 proven at trial.

27 146. The wrongful acts of First California Bank were done maliciously,
28 oppressively, and with intent to defraud, and Plaintiffs and Class members are

1 entitled to punitive and exemplary damages in an amount to be ascertained
2 according to proof.

3 147. As a legal result of the conversion by Defendants, and First California
4 Bank's assistance thereof, Plaintiffs, and each of them, suffered damages
5 including, but not limited to, the amount of money converted, as well as the time
6 and money expended to recovery said wrongfully converted funds including, but
7 not limited to, attorneys' fees and costs.

8 148. Punitive damages should also be awarded pursuant to Civil Code
9 section 3294 as the conduct of Defendants, and each of them, was malicious,
10 oppressive and/or fraudulent, in conscious disregard for the rights of Plaintiffs.

11 149. WHEREFORE, the Plaintiffs, and each of them, pray for judgment
12 against Defendants, as set forth herein.

13 **SEVENTH CAUSE OF ACTION**

14 **VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200 *et seq.***

15 **UNLAWFUL, FRAUDULENT, AND UNFAIR BUSINESS**

16 **ACTS AND PRACTICES**

17 **(As Against All Defendants)**

18 150. Plaintiffs incorporate by reference the allegations contained in all
19 prior paragraphs of this Complaint as though fully set forth herein.

20 151. By their wrongful conduct, as set forth above, Defendants, and each
21 of them, engaged in unfair, unlawful, and/or fraudulent acts in violation of §
22 17200 *et seq.* of the California Business and Professions Code.

23 152. Defendants' practices were unlawful, unfair, and/or fraudulent
24 business practices for the reasons set forth below, without limitation:

25 (a) Defendants' acts and practices constitute fraud and deceit;

26 (b) Defendants' acts and practices were unfair in that they offend
27 public policy as expressed in statutes and regulations, and are
28 unscrupulous;

1 (c) Defendants' practices caused injury to Plaintiffs; and

2 (d) Defendants' practices were unlawful.

3 153. Plaintiffs seek restitution from Defendants, and each of them, as a
4 result of their unfair, unlawful, and/or deceptive business acts or practices.

5 154. WHEREFORE, Plaintiffs pray for relief as set forth below.

6 **EIGHTH CAUSE OF ACTION**

7 **DECLARATORY RELIEF**

8 **(As Against FIRST CALIFORNIA BANK and DOES 5-10)**

9 155. Plaintiffs incorporate by reference all the allegations contained in the
10 Complaint as though fully set forth herein.

11 156. An actual controversy has arisen and now exists relating to the rights
12 and duties of the parties herein in that Plaintiffs contend that they are the rightful
13 owners of, and are entitled to immediate access to, funds held various accounts of
14 First California Bank; whereas First California Bank has refused to provide
15 Plaintiffs with access to their accounts, complete information regarding Plaintiffs'
16 accounts, the funds held in those accounts, or Plaintiffs' funds that have been
17 wrongfully transferred into other accounts maintained at First California Bank.

18 157. Plaintiffs desire a judicial determination of their rights and duties, and
19 a declaration as to:

20 (a) Whether the funds currently existing in Plaintiffs' accounts are the
21 rightful property of Plaintiffs;

22 (b) Whether First California Bank should provide Plaintiffs with
23 access to their accounts;

24 (c) Whether First California Bank should immediately distribute to
25 Plaintiffs the balance of their accounts;

26 (d) Whether First California Bank is obligated to provide Plaintiffs
27 with complete information regarding Plaintiffs' accounts, including all bank
28 statements and cancelled checks from the past five years; and

1 (e) Whether First California Bank should provide Plaintiffs with all
2 funds wrongfully transferred from Plaintiffs' accounts to other accounts currently
3 maintained at First California Bank.

4 158. WHEREFORE, Plaintiffs pray for relief as set forth below.

5 **PRAYER FOR RELIEF**

6 Plaintiffs pray for a judgment:

- 7 1. For compensatory damages, according to proof;
- 8 2. Punitive and exemplary damages, according to proof;
- 9 3. For a preliminary and permanent injunction against Defendants
10 restraining, preventing and enjoining them and their unnamed co-
11 conspirators and all those acting in concern with them, from engaging
12 in the unlawful, unfair, and/or fraudulent actions alleged in this
13 complaint;
- 14 4. For a preliminary and permanent injunction against Defendants
15 restraining, preventing and enjoining them and their unnamed co-
16 conspirators and all those acting in concern with them, from
17 withdrawing, transferring, or otherwise accessing any funds contained
18 in any of the following accounts:
- 19 5. For restitution of all monies that were unlawfully, unfairly, and/or
20 fraudulently obtained from Plaintiffs or in equity and good
21 conscience Defendants should pay to Plaintiffs pursuant to *Korea*
22 *Supply Co. v. Lockheed Martin Corp.*, 29 Cal.4th 1134 (2003).
- 23 6. For pre-judgment and post-judgment interest at the legal rate;
- 24 7. Declaring that the funds currently existing in Plaintiffs' accounts are
25 the rightful property of Plaintiffs;
- 26 8. Requiring First California Bank should provide Plaintiffs with access
27 to their accounts;
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9. Requiring First California Bank to provide Plaintiffs with a complete accounting of all funds currently maintained in Plaintiffs' accounts, and an accounting of all funds transferred from Plaintiffs' account to any other accounts held by First California Bank over the course of the last five years;
10. Requiring First California Bank to immediately distribute to Plaintiffs the balance of their accounts;
11. Requiring First California Bank to provide Plaintiffs with complete information regarding Plaintiffs' accounts, including all bank statements and cancelled checks from the past five years;
12. Declaring that all funds transferred from Plaintiffs' account to any other accounts held by First California Bank remain the rightful property of Plaintiffs;
13. Requiring First California Bank to provide Plaintiffs with all funds wrongfully transferred from Plaintiffs' accounts to other accounts currently maintained at First California Bank; and
14. For such other and further relief s the Court may deem just and proper.

DATED:

Sept 22, 2011

COTCHETT, PITRE & McCARTHY, LLP

By:


JOSEPH W. COTCHETT
Attorneys for Plaintiff

14-00000-1

JURY DEMAND

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES SO TRIABLE.

DATED: Sept 22, 2011

COTCHETT PITRE & McCARTHY, LLP

By: 

JOSEPH W. COTCHETT
Attorneys for Plaintiff

Suspicious Activity Report

March 2011

Previous editions will not be accepted after September 30, 2011

ALWAYS COMPLETE ENTIRE REPORT
(see instructions)

FRB: FR 2230 OMB No. 7100-0212
FDIC: 6710/06 OMB No. 3064-0077
OCC: 8010-9,8010-1 OMB No. 1557-0180
OTS: 1601 OMB No. 1550-0003
NCUA: 2362 OMB No. 3133-0094
TREASURY: TD F 90-22.47 OMB No. 1506-0001

1

1 Check box below only if correcting a prior report.

☐ Corrects Prior Report (see instruction #3 under "How to Make a Report")

Part I Reporting Financial Institution Information

| | | | | | |
|--|--------------|--|---|--|--|
| 2 Name of Financial Institution | | | 3 EIN | | |
| 4 Address of Financial Institution | | | 5 Primary Federal Regulator a <input type="checkbox"/> Federal Reserve d <input type="checkbox"/> OCC b <input type="checkbox"/> FDIC e <input type="checkbox"/> OTS c <input type="checkbox"/> NCUA | | |
| 6 City | 7 State | 8 Zip Code - | | | |
| 9 Address of Branch Of fice(s) where activity occurred | | | <input type="checkbox"/> Multiple Branches (include information in narrative, Part V) | | |
| 10 City | 11 State | 12 Zip Code - | 13 If Institution closed, date closed MM / DD / YYYY | | |
| 14 Account number(s) affected, if any | | Closed? | | Closed? | |
| a _____ | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | c _____ <input type="checkbox"/> Yes <input type="checkbox"/> No | |
| b _____ | | <input type="checkbox"/> Yes <input type="checkbox"/> No | | d _____ <input type="checkbox"/> Yes <input type="checkbox"/> No | |

Part II Suspect Information

☐ Suspect Information Unavailable

| | | | | | |
|---|--------------|---|---|--|--|
| 15 Last Name or Name of Entity | | 16 First Name | | 17 Middle | |
| 18 Address | | | | 19 SSN, EIN or TIN | |
| 20 City | 21 State | 22 Zip Code - | 23 Country (Enter 2 digit code) | | |
| 24 Phone Number - Residence (include area code) () | | 25 Phone Number - Work (include area code) () | | | |
| 26 Occupation/Type of Business | | 27 Date of Birth MM / DD / YYYY | | 28 Admission/Confession? a <input type="checkbox"/> Yes b <input type="checkbox"/> No | |
| 29 Forms of Identification for Suspect: a <input type="checkbox"/> Driver's License/State ID b <input type="checkbox"/> Passport c <input type="checkbox"/> Alien Registration d <input type="checkbox"/> Other _____ Number _____ Issuing Authority _____ | | | | | |
| 30 Relationship to Financial Institution: a <input type="checkbox"/> Accountant d <input type="checkbox"/> Attorney g <input type="checkbox"/> Customer j <input type="checkbox"/> Officer b <input type="checkbox"/> Agent e <input type="checkbox"/> Borrower h <input type="checkbox"/> Director k <input type="checkbox"/> Shareholder c <input type="checkbox"/> Appraiser f <input type="checkbox"/> Broker i <input type="checkbox"/> Employee l <input type="checkbox"/> Other _____ | | | | | |
| 31 Is the relationship an insider relationship? a <input type="checkbox"/> Yes b <input type="checkbox"/> No If Yes specify: c <input type="checkbox"/> Still employed at financial institution e <input type="checkbox"/> Terminated d <input type="checkbox"/> Suspended f <input type="checkbox"/> Resigned | | | 32 Date of Suspension, Termination, Resignation MM / DD / YYYY | | |

2

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|---|--|--|---|---|---|--|---|--|--|--|--|--|---|--|---|--|--|--|---|--|--|--|--|--|--|--|--|---|
| 33 Date or date range of suspicious activity From: MM/DD/YYYY To: MM/DD/YYYY | | 34 Total dollar amount involved in known or suspicious activity \$.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 35 Summary characterization of suspicious activity: <table border="0"><tr><td>a <input type="checkbox"/> Bank Secrecy Act/Structuring/ Money Laundering</td><td>f <input type="checkbox"/> Computer Intrusion</td><td>i <input type="checkbox"/> Debit Card Fraud</td></tr><tr><td>b <input type="checkbox"/> Bribery/Gratuity</td><td>g <input type="checkbox"/> Consumer Loan Fraud</td><td>m <input type="checkbox"/> Defalcation/Embezzlement</td></tr><tr><td>c <input type="checkbox"/> Check Fraud</td><td>h <input type="checkbox"/> Counterfeit Check</td><td>n <input type="checkbox"/> False Statement</td></tr><tr><td>d <input type="checkbox"/> Check Kiting</td><td>j <input type="checkbox"/> Counterfeit Credit/Debit Card</td><td>o <input type="checkbox"/> Misuse of Position or Self Dealing</td></tr><tr><td>e <input type="checkbox"/> Commercial Loan Fraud</td><td>k <input type="checkbox"/> Counterfeit Instrument (other)</td><td>p <input type="checkbox"/> Mortgage Loan Fraud</td></tr><tr><td>s <input type="checkbox"/> Other _____ (type of activity)</td><td>l <input type="checkbox"/> Credit Card Fraud</td><td>q <input type="checkbox"/> Mysterious Disappearance</td></tr><tr><td></td><td></td><td>r <input type="checkbox"/> Wire Transfer Fraud</td></tr><tr><td></td><td></td><td>t <input type="checkbox"/> Terrorist Financing</td></tr><tr><td></td><td></td><td>u <input type="checkbox"/> Identity Theft</td></tr></table> | | | | a <input type="checkbox"/> Bank Secrecy Act/Structuring/ Money Laundering | f <input type="checkbox"/> Computer Intrusion | i <input type="checkbox"/> Debit Card Fraud | b <input type="checkbox"/> Bribery/Gratuity | g <input type="checkbox"/> Consumer Loan Fraud | m <input type="checkbox"/> Defalcation/Embezzlement | c <input type="checkbox"/> Check Fraud | h <input type="checkbox"/> Counterfeit Check | n <input type="checkbox"/> False Statement | d <input type="checkbox"/> Check Kiting | j <input type="checkbox"/> Counterfeit Credit/Debit Card | o <input type="checkbox"/> Misuse of Position or Self Dealing | e <input type="checkbox"/> Commercial Loan Fraud | k <input type="checkbox"/> Counterfeit Instrument (other) | p <input type="checkbox"/> Mortgage Loan Fraud | s <input type="checkbox"/> Other _____ (type of activity) | l <input type="checkbox"/> Credit Card Fraud | q <input type="checkbox"/> Mysterious Disappearance | | | r <input type="checkbox"/> Wire Transfer Fraud | | | t <input type="checkbox"/> Terrorist Financing | | | u <input type="checkbox"/> Identity Theft |
| a <input type="checkbox"/> Bank Secrecy Act/Structuring/ Money Laundering | f <input type="checkbox"/> Computer Intrusion | i <input type="checkbox"/> Debit Card Fraud | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| b <input type="checkbox"/> Bribery/Gratuity | g <input type="checkbox"/> Consumer Loan Fraud | m <input type="checkbox"/> Defalcation/Embezzlement | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| c <input type="checkbox"/> Check Fraud | h <input type="checkbox"/> Counterfeit Check | n <input type="checkbox"/> False Statement | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| d <input type="checkbox"/> Check Kiting | j <input type="checkbox"/> Counterfeit Credit/Debit Card | o <input type="checkbox"/> Misuse of Position or Self Dealing | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| e <input type="checkbox"/> Commercial Loan Fraud | k <input type="checkbox"/> Counterfeit Instrument (other) | p <input type="checkbox"/> Mortgage Loan Fraud | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| s <input type="checkbox"/> Other _____ (type of activity) | l <input type="checkbox"/> Credit Card Fraud | q <input type="checkbox"/> Mysterious Disappearance | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | r <input type="checkbox"/> Wire Transfer Fraud | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | t <input type="checkbox"/> Terrorist Financing | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | u <input type="checkbox"/> Identity Theft | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 36 Amount of loss prior to recovery \$.00 | | 37 Dollar amount of recovery (if applicable) \$.00 | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 38 Has the suspicious activity had a material impact on, or otherwise affected, the financial soundness of the institution? a <input type="checkbox"/> Yes b <input type="checkbox"/> No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 39 Has the institution's bonding company been notified? a <input type="checkbox"/> Yes b <input type="checkbox"/> No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 40 Has any law enforcement agency already been advised by telephone, written communication, or otherwise? <table border="0"><tr><td>a <input type="checkbox"/> DEA</td><td>d <input type="checkbox"/> Postal Inspection</td><td>g <input type="checkbox"/> Other Federal</td></tr><tr><td>b <input type="checkbox"/> FBI</td><td>e <input type="checkbox"/> Secret Service</td><td>h <input type="checkbox"/> State</td></tr><tr><td>c <input type="checkbox"/> IRS</td><td>f <input type="checkbox"/> U.S. Customs</td><td>i <input type="checkbox"/> Local</td></tr><tr><td colspan="3">j <input type="checkbox"/> Agency Name (for g, h or i) _____</td></tr></table> | | | | a <input type="checkbox"/> DEA | d <input type="checkbox"/> Postal Inspection | g <input type="checkbox"/> Other Federal | b <input type="checkbox"/> FBI | e <input type="checkbox"/> Secret Service | h <input type="checkbox"/> State | c <input type="checkbox"/> IRS | f <input type="checkbox"/> U.S. Customs | i <input type="checkbox"/> Local | j <input type="checkbox"/> Agency Name (for g, h or i) _____ | | | | | | | | | | | | | | | | | |
| a <input type="checkbox"/> DEA | d <input type="checkbox"/> Postal Inspection | g <input type="checkbox"/> Other Federal | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| b <input type="checkbox"/> FBI | e <input type="checkbox"/> Secret Service | h <input type="checkbox"/> State | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| c <input type="checkbox"/> IRS | f <input type="checkbox"/> U.S. Customs | i <input type="checkbox"/> Local | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| j <input type="checkbox"/> Agency Name (for g, h or i) _____ | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 41 Name of person(s) contacted at Law Enforcement Agency | | 42 Phone Number (include area code) () | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 43 Name of person(s) contacted at Law Enforcement Agency | | 44 Phone Number (include area code) () | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Part IV Contact for Assistance | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 45 Last Name | | 46 First Name | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 47 Middle | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 48 Title/Occupation | | 49 Phone Number (include area code) () | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 50 Date Prepared MM/DD/YYYY | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 51 Agency (if not filed by financial institution) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

Explanation/description of known or suspected violation of law or suspicious activity.

This section of the report is critical. The care with which it is written may make the difference in whether or not the described conduct and its possible criminal nature are clearly understood. Provide below a chronological and complete account of the possible violation of law, including what is unusual, irregular or suspicious about the transaction, using the following checklist as you prepare your account. If necessary, continue the narrative on a duplicate of this page.

- a Describe supporting documentation and retain for 5 years.
- b Explain who benefited, financially or otherwise, from the transaction, how much, and how.
- c Retain any confession, admission, or explanation of the transaction provided by the suspect and indicate to whom and when it was given.
- d Retain any confession, admission, or explanation of the transaction provided by any other person and indicate to whom and when it was given.
- e Retain any evidence of cover-up or evidence of an attempt to deceive federal or state examiners or others.

- f Indicate where the possible violation took place (e.g., main office, branch, other).
- g Indicate whether the possible violation is an isolated incident or relates to other transactions.
- h Indicate whether there is any related litigation; if so, specify.
- i Recommend any further investigation that might assist law enforcement authorities.
- j Indicate whether any information has been excluded from this report; if so, why?
- k If you are correcting a previously filed report, describe the changes that are being made.

For Bank Secrecy Act/Structuring/Money Laundering reports, include the following additional information:

- l Indicate whether currency and/or monetary instruments were involved. If so, provide the amount and/or description of the instrument (for example, bank draft, letter of credit, domestic or international money order, stocks, bonds, traveler's checks, wire transfers sent or received, cash, etc.).
- m Indicate any account number that may be involved or affected.

Tips on SAR Form preparation and filing are available in the SAR Activity Review at www.fincen.gov/pub_reports.html

Paperwork Reduction Act Notice: The purpose of this form is to provide an effective and consistent means for financial institutions to notify appropriate law enforcement agencies of known or suspected criminal conduct or suspicious activities that take place at or were perpetrated against financial institutions. This report is required by law, pursuant to authority contained in the following statutes. Board of Governors of the Federal Reserve System: 12 U.S.C. 324, 334, 811a, 1844(b) and (c), 3105(c)(2) and 3108(a). Federal Deposit Insurance Corporation: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of the Comptroller of the Currency: 12 U.S.C. 93a, 1818, 1881-84, 3401-22. Office of Thrift Supervision: 12 U.S.C. 1463 and 1464. National Credit Union Administration: 12 U.S.C. 1766(a), 1766(q). Financial Crimes Enforcement Network: 31 U.S.C. 5318(g). Information collected on this report is confidential (5 U.S.C. 552(b)(7) and 552a(k)(2), and 31 U.S.C. 5318(g)). The Federal financial institutions' regulatory agencies and the U.S. Departments of Justice and Treasury may use and share the information. Public reporting and recordkeeping burden for this information collection is estimated to average 30 minutes per response, and includes time to gather and maintain data in the required report, review the instructions, and complete the information collection. Send comments regarding this burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503 and, depending on your primary Federal regulatory agency to Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551; or Assistant Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429; or Legislative and Regulatory Analysis Division, Office of the Comptroller of the Currency, Washington, DC 20219; or Office of Thrift Supervision, Enforcement Office, Washington, DC 20552; or National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314; or Office of the Director, Financial Crimes Enforcement Network, Department of the Treasury, P.O. Box 39, Vienna, VA 22183. The agencies may not conduct or sponsor, and an organization (or a person) is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Suspicious Activity Report Instructions

Safe Harbor Federal law (31 U.S.C. 5318(g)(3)) provides complete protection from civil liability for all reports of suspicious transactions made to appropriate authorities, including supporting documentation, regardless of whether such reports are filed pursuant to this report's instructions or are filed on a voluntary basis. Specifically, the law provides that a financial institution, and its directors, officers, employees and agents, that make a disclosure of any possible violation of law or regulation, including in connection with the preparation of suspicious activity reports, "shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure".

Notification Prohibited Federal law (31 U.S.C. 5318(g)(2)) requires that a financial institution, and its directors, officers, employees and agents who, voluntarily or by means of a suspicious activity report, report suspected or known criminal violations or suspicious activities may not notify any person involved in the transaction that the transaction has been reported.

In situations involving violations requiring immediate attention, such as when a reportable violation is ongoing, the financial institution shall immediately notify, by telephone, appropriate law enforcement and financial institution supervisory authorities in addition to filing a timely suspicious activity report.

WHEN TO MAKE A REPORT:

1. All financial institutions operating in the United States, including insured banks, savings associations, savings association service corporations, credit unions, bank holding companies, nonbank subsidiaries of bank holding companies, Edge and Agreement corporations, and U.S. branches and agencies of foreign banks, are required to make this report following the discovery of:
 - a. **Insider abuse involving any amount.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying one of its directors, officers, employees, agents or other institution-affiliated parties as having committed or aided in the commission of a criminal act regardless of the amount involved in the violation.
 - b. **Violations aggregating \$5,000 or more where a suspect can be identified.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating \$5,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, and the financial institution has a substantial basis for identifying a possible suspect or group of suspects. If it is determined prior to filing this report that the identified suspect or group of suspects has used an "alias," then information regarding the true identity of the suspect or group of suspects, as well as alias identifiers, such as drivers' licenses or social security numbers, addresses and telephone numbers, must be reported.
 - c. **Violations aggregating \$25,000 or more regardless of a potential suspect.** Whenever the financial institution detects any known or suspected Federal criminal violation, or pattern of criminal violations, committed or attempted against the financial institution or involving a transaction or transactions conducted through the financial institution and involving or aggregating \$25,000 or more in funds or other assets, where the financial institution believes that it was either an actual or potential victim of a criminal violation, or series of criminal violations, or that the financial institution was used to facilitate a criminal transaction, even though there is no substantial basis for identifying a possible suspect or group of suspects.
 - d. **Transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.** Any transaction (which for purposes of this subsection means a deposit, withdrawal, transfer between accounts, exchange of currency, loan, extension of credit, purchase or sale of any stock, bond, certificate of deposit, or other monetary instrument or investment security, or any other payment, transfer, or delivery by, through, or to a financial institution, by whatever means effected) conducted or attempted by, at

or through the financial institution and involving or aggregating \$5,000 or more in funds or other assets, if the financial institution knows, suspects, or has reason to suspect that:

- i. The transaction involves funds derived from illegal activities or is intended or conducted in order to hide or disguise funds or assets derived from illegal activities (including, without limitation, the ownership, nature, source, location, or control of such funds or assets) as part of a plan to violate or evade any law or regulation or to avoid any transaction reporting requirement under Federal law;
- ii. The transaction is designed to evade any regulations promulgated under the Bank Secrecy Act; or
- iii. The transaction has no business or apparent lawful purpose or is not the sort in which the particular customer would normally be expected to engage, and the financial institution knows of no reasonable explanation for the transaction after examining the available facts, including the background and possible purpose of the transaction.

The Bank Secrecy Act requires all financial institutions to file currency transaction reports (CTRs) in accordance with the Department of the Treasury's implementing regulations (31 CFR Chapter X). These regulations require a financial institution to file a CTR whenever a currency transaction exceeds \$10,000. If a currency transaction exceeds \$10,000 and is suspicious, the institution must file both a CTR (reporting the currency transaction) and a suspicious activity report (reporting the suspicious or criminal aspects of the transaction). If a currency transaction equals or is below \$10,000 and is suspicious, the institution should only file a suspicious activity report.

2. Computer Intrusion. For purposes of this report, "computer intrusion" is defined as gaining access to a computer system of a financial institution to:

- a. Remove, steal, procure, or otherwise affect funds of the institution or the institution's customers;
- b. Remove, steal, procure or otherwise affect critical information of the institution including customer account information; or
- c. Damage, disable or otherwise affect critical systems of the institution.

For purposes of this reporting requirement, computer intrusion does not mean attempted intrusions of websites or other non-critical information systems of the institution that provide no access to institution or customer financial or other critical information.

3. A financial institution is required to file a suspicious activity report no later than 30 calendar days after the date of initial detection of facts that may constitute a basis for filing a suspicious activity report. If no suspect was identified on the date of detection of the incident requiring the filing, a financial institution may delay filing a suspicious activity report for an additional 30 calendar days to identify a suspect. In no case shall reporting be delayed more than 60 calendar days after the date of initial detection of a reportable transaction.
4. This suspicious activity report does not need to be filed for those robberies and burglaries that are reported to local authorities, or (except for savings associations and service corporations) for lost, missing, counterfeit, or stolen securities that are reported pursuant to the requirements of 17 CFR 240.17f-1.

HOW TO MAKE A REPORT:

1. Send each completed suspicious activity report to:

Detroit Computing Center, P.O. Box 33980, Detroit, MI 48232-0980

2. For items that do not apply or for which information is not available, leave blank.
3. If you are correcting a previously filed report, check the box at the top of the report (line 1). Complete the report in its entirety and include the corrected information in the applicable boxes. Then describe the changes that are being made in Part V (Description of Suspicious Activity), line k.
4. **Do not include any supporting documentation with the suspicious activity report.** Identify and retain a copy of the suspicious activity report and all original supporting documentation or business record equivalent for five (5) years from the date of the suspicious activity report. All supporting documentation must be made available to appropriate authorities upon request.
5. If more space is needed to report additional suspects, attach copies of page 1 to provide the additional information. If more space is needed to report additional branch addresses, include this information in the narrative, Part V.
6. Financial institutions are encouraged to provide copies of suspicious activity reports to state and local authorities, where appropriate.



FIRST CALIFORNIA BANK

September 16, 2011

Re: Durkee & Associates

Dear Durkee Client:

We have been working diligently to try to resolve the status of the accounts that were controlled by Durkee & Associates ("Durkee"). The more we investigated the situation, the more it appears that Durkee had comingled funds belonging to various different campaigns and organizations and had made repeated transfers between accounts on which Durkee had signing authority.

We concluded that there was a very high likelihood that the balance credited to any given account did not represent accurately the funds, if any, actually belonging to the campaign or organization named on the account. In certain circumstances, it is apparent that account balances contained funds that had previously been credited to non-related accounts. These conditions appeared to be pervasive in the Durkee controlled accounts.

Faced with grave uncertainties and conflicting, or potentially conflicting, demands, based upon advice of counsel, the Bank determined that it would file an interpleader action in Los Angeles Superior Court with respect to all, or at least the vast majority, of the Durkee controlled accounts.

The Bank will remit the account balances to the appropriate court, which will then be in a position, over time, to determine the specific amounts that are owed to each of the campaigns, candidates and organizations that had utilized the services of Durkee. We believe that this is the best way to ensure that all of the Durkee clients are treated fairly and equitably with full judicial oversight.

Each of the parties to the interpleader action will be receiving service of process. In order to expedite the matter, you might want to provide us with the name of the appropriate person with, or attorney for, the campaign or organization as well as his/her address. To do so, please complete the enclosed form and return it in the envelope provided or you may also email the information to durkeeinfo@fcbank.com or call First California Bank's Client Services Group at 1-800-856-7905.

Very truly yours,

Edmond R. Sahakian
Executive Vice President
Branch Administrator

P. O. Box 5112 Westlake Village, CA 91359-5112

Phone 800-856-7905

Fax 805-437-4358

www.fcbank.com Member FDIC

Exhibit B

15044930-18

UNITED STATES DISTRICT COURT **FILED****EASTERN DISTRICT OF CALIFORNIA**

SEP 06 2011

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA
BY [Signature]
DEPUTY CLERK

UNITED STATES OF AMERICA

v.

KINDE DURKEE,

CRIMINAL COMPLAINT

CASE NUMBER: 2:11mj274 DAD

(Name and Address of Defendant)

I, the undersigned complainant state that the following is true and correct to the best of my knowledge and belief. From on or about September 1, 2010 through September 2, 2011, in the Eastern District of California and elsewhere, defendant did, (Track Statutory Language of Offense)

► Devise and intend to devise a material scheme and artifice to defraud Jose Solorio and the Solorio for Assembly 2010 campaign and to obtain money from them by means of materially false and fraudulent pretenses, representations, and promises; and that, for the purpose of executing and attempting to execute the aforementioned scheme and artifice to defraud, did knowingly cause to be sent or delivered by the Postal Service or any private or commercial interstate carrier, items of mail according to the directions thereon,

in violation of Title 18, United States Code, Section 1341. I further state that I am a Special Agent with the Federal Bureau of Investigation Service and that this complaint is based on the following facts:

► See attached affidavit of FBI Special Agent Reginald L. Coleman

Continued on the attached sheet and made a part of this complaint: X

[Signature]
Signature of Complainant: Reginald L. Coleman
Special Agent
Federal Bureau of Investigation

Sworn to before me, and signed in my presence
September 2, 2011

at Clarksburg, California

Date

City

State

Hon. Dale A. Drozd
United States Magistrate

[Signature]
Signature of Judge

Name of Judge

Title of Judge

10-00000000-00

AFFIDAVIT

I, Reginald L. Coleman, being duly sworn, depose and state as follows:

BACKGROUND

1. I am a Special Agent (SA) with the Federal Bureau of Investigation (FBI) and have been so employed for nearly 13 years. I am presently assigned to the Public Corruption Squad in the Sacramento Field Division.

2. The information contained in this affidavit comes from information supplied to me by FBI SA Jason Jones and FBI Forensic Accountant (FA) Laurelea Williams, as well as my review of bank records.

3. I am informed by FBI SA Jason Jones that he has been investigating KINDE DURKEE for possible violations of Title 18, United States Code, Section 1341.

4. For the reasons stated herein, I respectfully assert that there is probable cause to believe that between September 1, 2010 and continuing to the present, in the State and Eastern District of California, KINDE DURKEE did devise and intend to devise a material scheme and artifice to defraud Jose Solorio and the Solorio for Assembly 2010 campaign, and to obtain money from them by means of materially false and fraudulent pretenses, representations, and promises; and that, for the purpose of executing and attempting to execute the aforementioned scheme and

artifice to defraud, did knowingly cause to be sent or delivered by the Postal Service or any private or commercial interstate carrier, items of mail according to the directions thereon, in violation of Title 18, United States Code, Section 1341.

FACTS

5. According to FBI SA Jones, the investigation of KINDE DURKEE stemmed from a referral by the Fair Political Practices Commission (FPPC) to federal law enforcement. The FPPC reported that based on its investigation, it appeared that KINDE DURKEE, through her firm DURKEE & Associates (D&A), which is located in Burbank, CA, had misappropriated money from her clients' bank accounts and had filed false disclosure reports to hide the misappropriations. Some of the disclosure reports were submitted to the California Secretary of State through the mail.

6. I am informed by FBI SA Jones that Grant Beauchamp is a Program Specialist in the Enforcement Division of the FPPC who has conducted financial investigations into KINDE DURKEE and D&A. FBI SA Jones has further informed me that according to Mr. Beauchamp, KINDE DURKEE operated D&A, and that D&A specialized in providing accounting and campaign reporting services to political committees, including political candidate campaign committees, and non-profit organizations. Mr. Beauchamp said that Ms. DURKEE is normally the committee treasurer for the political campaign committees for which she provides her services. As such, she

signed and submitted campaign disclosure forms for state officials to the California Secretary of State as required by state law.

7. I am also informed by FBI SA Jones that Mr. Beauchamp also reported that it appeared from his review of documents, including bank records, that DURKEE transferred money from her clients' bank accounts to her firm's bank accounts without her clients' knowledge or authorization. It also appeared that DURKEE refunded a portion of the misappropriated money when needed to cover checks or when misappropriations had been detected.

8. I am informed by FA Williams that bank records reviewed by the FBI establish that Ms. DURKEE appears to have signature authority over more than 400 bank accounts, including those for political campaigns, and that substantial sums of money have been routinely moved out of client campaign committees into D&A accounts or into other client campaign committee accounts. FBI SA Jones has informed me that a review of disclosure forms that Ms. DURKEE has apparently signed and submitted to the California Secretary of State for these campaign committees reveals that many of these transactions - both the expenditure and receipt of funds - are not reflected as required on the relevant forms.

9. FA Williams has informed me that bank records reviewed by her establish that money transferred by DURKEE from client

accounts to her business accounts have been used to pay her personal expenses, including mortgage payments and American Express charges, as well as business expenses. The records also indicate that Ms. DURKEE has taken more money out of the committee accounts than she has reported on the disclosure forms.

10. Ms. DURKEE was interviewed by FBI agents, including FBI SA Jones, on September 1, 2011. During the course of that interview, Ms. DURKEE admitted that she had been misappropriating her clients' money for years and that forms she filed with the state were false.

Solorio for Assembly 2010

The Deposit of \$300,000

11. Your affiant has reviewed bank records and schedules for bank records for D&A at City National Bank and First California Bank. Those records reveal that on approximately October 1, 2010, a cashier's check made payable to Solorio for Assembly 2010 in the amount of \$300,000 was deposited into an account for D&A, number xxxx83658, at City National Bank. The deposit of the check brought the balance in the xxxx83658 account to approximately \$308,027. The source of the \$300,000 cashier's check appears from bank records to be from a money market account in the name of Solorio for Assembly 2010 held at First California Bank.

12. A number of checks were issued from the D&A account,

number xxx83658, into which the \$300,000 was deposited:

- one for \$125,000 dated September 30, 2010 and payable to the Committee to Re-Elect Loretta Sanchez, which was apparently signed by KINDE DURKEE;

- one for \$32,000 dated September 30, 2010 and payable to Merchants Account and was deposited into D&A account number xxx1251, which was apparently signed by KINDE DURKEE;

- one for \$21,000 dated October 4, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE;

- one for \$25,000 dated October 4, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE; and

- one for \$15,000 dated October 4, 2010 and payable to Durkee Merchants Account and was deposited into D&A account number xxx1251, which was apparently signed by KINDE DURKEE.

The Transfer of \$32,000

13. The check to D&A for \$32,000 was deposited on September 30, 2010 into a D&A account at First California Bank, account number XXX1251, bringing the balance to \$40,693. A number of checks were then issued from the account, including one dated September 30, 2010 and made payable to D&A for \$36,000, which was apparently signed by KINDE DURKEE. This check caused the account number xxx1251 to have a negative balance.

14. The \$36,000 check was deposited on September 30, 2010 into a D&A account at First California Bank, account number

xxx0865. From there, \$30,000 was withdrawn in the form of a check apparently signed by KINDE DURKEE made payable to D&A and marked for "payroll." The \$30,000 check was deposited into First California Bank account number xxx9123. The deposit covered overdrafts including checks to Peter Froelich for \$2,176.08, Adrian Grier for \$1,476.72, and Matt Lemcke for \$1,697.78, and Lydia Almanza \$1,172.50. Your affiant is informed by FA Williams that there is evidence these individuals work as account executives for D&A since she has seen signatures in their names on checks from campaign accounts to D&A, and/or their names appear in the staff directory on the website for D&A.

15. In other words, it appears DURKEE used some of the \$300,000 Solorio for Assembly 2010 check to make her payroll.

The Transfer of \$25,000

16. The \$25,000 check to D&A referenced above was subsequently deposited into First California Bank, account number xxx0865, on approximately October 4, 2010. This brought the balance in that account to approximately \$37,084. From that account, two withdrawals were made to pay American Express, one in the amount of \$16,854.76 and another in the amount of \$679.03.

17. A review of a bill for American Express reveals that the payment for \$16,854.76 paid for a bill which included charges from a variety of entities, including:

Union 76;

Amazon.com (gift cards);
Baskin Robbins;
Ulta (cosmetics);
Turners Outdoorsman;
Valero;
Deckert Surgical;
Ariel's Grotto at Disneyland;
TIVO, Inc.;
Virgin America (for \$3,984.80); and
Bixby Animal Clinic.

18. A review of a bill for American Express reveals that the payment for \$679.03 paid for a bill which included charges to a variety of entities, including Long Beach Aquarium, QVC, Costco, and Crocs.

The Deposit of \$377,181.24

19. Your affiant has reviewed bank records and schedules for bank records for D&A at City National Bank and First California Bank. Those records reveal that on approximately October 8, 2010, a cashier's check made payable to Solorio for Assembly 2010 in the amount of \$377,181.24 was deposited into an account for D&A, number xxxx83658, at City National Bank. The check brought the balance in the account to approximately \$415,458. The source of the cashier's check for \$377,181.24 appears to be from a money market account in the name of Solorio

for Assembly 2010 held at First California Bank.

20. A number of checks were issued from the D&A account, number xxxx83658, into which the \$377,181.24 was deposited:

- one for \$45,000 dated October 7, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE;
- one for \$45,000 dated October 7, 2010 and payable to Committee to Re-Elect Loretta Sanchez;
- one for \$60,000 dated October 8, 2010 and payable to Beth Krom for Congress;
- one for \$40,000 dated October 8, 2010 and payable to Susan Davis for Congress;
- one for \$25,000 dated October 11, 2010 and payable to Merchants Account and was deposited into D&A account number xxx1251, which was apparently signed by KINDE DURKEE;
- one for \$25,000 dated October 11, 2010 and payable to Merchants Account and was deposited into D&A account number xxx1251, which was apparently signed by KINDE DURKEE; and
- one for \$5,000 dated October 11, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE.

The Transfer of \$45,000

21. The check to D&A for \$45,000 dated October 7, 2010 was deposited into a D&A account at First California Bank, account number XXX0865 on the same date, bringing the balance to \$33,172. A number of checks were issued from the account, including one

dated September 30, 2010 (which cleared on October 7, 2010) and was made payable to Belmont Village for \$4,950. According to Google, Belmont Village is a chain of assisted living facilities. In the memo portion of the check to Belmont Village, there is a notation on it reading "Norma Durkee." I am informed by FBI SA Jones that during the course of the interview with Ms. DURKEE on September 1, 2011, Ms. DURKEE admitted that she helped to pay expenses at an assisted living facility for her mother.

22. Another check issued from account number xxx0865 was one to D&A in the amount of \$25,000 and dated October 7, 2010. The check has a notation "payroll" in the memo portion of the check. The \$25,000 deposit was deposited into First California Bank Account xxx9123 covered overdrafts including checks to Lydia Almanza for \$1,172.50, James Adamo for \$1,110, Timothy Watson for \$1,574.12, and Laura Maccallum for \$1,395.82. Your affiant is informed by FA Williams that there is evidence these individuals work as account executives for D&A since she has seen signatures in their names on checks from campaign accounts to D&A, and/or their names appear in the staff directory on the website for D&A. In other words, it appears DURKEE used some of the \$25,000 of the \$377,181.24 Solorio for Assembly 2010 check to make her payroll.

The Transfer of Two \$25,000 Checks

23. The two \$25,000 checks to the Merchants Account referenced above were subsequently deposited into D&A account

number xxx1251 at First California Bank on approximately October 12, 2010. The deposit of these two checks covered a negative balance and were also used to make payments to Democratic Foundation of Orange County - Voter Guide (\$13,000) and National Popular Vote (\$5,000).

The Deposit of \$50,000 from Shallman Communications

24. About one week after \$377,181.24 was deposited into the D&A account at City National Bank, number xxxx83658, a check for \$50,000 on the account of Shallman Communications was deposited into that same account. This latter check brought the balance to \$220,458.06.

25. A number of checks or debits were issued from that account:

- one check for \$6,000 dated October 13, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE;
- a debit for \$50,010 dated October 14, 2010 to purchase an official check (\$10 fee) made payable to the United States Treasury;
- a check for \$20,000 dated October 14, 2010 and payable to D&A Merchants, which was apparently signed by KINDE DURKEE; and
- a check for \$10,000 dated October 14, 2010 and payable to D&A, which was apparently signed by KINDE DURKEE.

The check for \$50,000 made payable to the United States

Treasury appears to be a tax payment by KINDE DURKEE. I am informed by FBI SA Jones that Ms. Durkee admitted to the agents that she had personal and business tax problems.

The Transfer of \$6,000

26. Bank records reveal that the \$6,000 check referenced above was subsequently deposited into account number xxx0865 at First California Bank on October 13, 2010. Bank records further reveal that a \$5,500 check dated September 29, 2010 (which cleared on October 13, 2010) and apparently signed by KINDE DURKEE was issued from that account and was made payable to MDC Realty Service. I am informed by FA Williams that other records reveal that KINDE DURKEE had a loan on her business office with MDC Realty Service. FBI SA Jones has informed your affiant that Ms. DURKEE admitted during the interview on September 1, 2011 that she paid all of her mortgages on her personal and business property out of her D&A business accounts.

The Transfer of \$20,000

27. Bank records reveal that the \$20,000 check to D&A Merchants referenced above was subsequently deposited into account number xxx1251 at First California Bank on October 14, 2010. That check covered a negative balance and was also used to make a payment to American Express in the amount of \$1,284.59. FA Williams informed your affiant that this appears to be a payment for a processing fee to American Express.

Interview with Assemblymember Jose Solorio

28. On September 2, 2011, your affiant spoke with Assemblymember Jose Solorio. He informed your affiant that he was not aware of the checks for \$300,000 and \$377,181.24 that were withdrawn from his money market account, and he did not authorize those withdrawals from that account.

Interview of KINDE DURKEE

29. According to FBI SA Jones, Ms. DURKEE informed him that she used the D&A business accounts to pay for her daily living expenses, including clothes, food, entertainment, and mortgages.

Reports filed with the California Secretary of State

October 11, 2010

30. The state disclosure form for Solorio for Assembly 2010 that was apparently signed by KINDE DURKEE and filed on approximately October 11, 2010 for the period of time July 1, 2010 to September 30, 2010 reported that there was cash-on-hand in the amount of \$729,135.56. According to bank records for Solorio for Assembly 2010, however, the actual balance as of September 30, 2010 was only \$33,175.81. The report contained no mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. This report was delivered by the Postal Service or a private or commercial interstate carrier to the California Secretary of State's office in Sacramento.

31. This report was subsequently amended by filings made on

November 5, 2010, November 15, 2010, and November 18, 2010. In none of those amended reports was there any mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. All three reports were delivered by the Postal Service or a private or commercial interstate carrier to the California Secretary of State's office in Sacramento.

October 21, 2010 *re/000*

32. The state disclosure form for Solorio for Assembly 2010 that was apparently signed by KINDE DURKEE and filed on approximately October 21, 2010 for the period of time October 1, 2010 to October 16, 2010 reported that there was cash-on-hand in the amount of \$747,712.73. According to bank records for Solorio for Assembly 2010, however, the actual balance as of October 15, 2010 was only \$63,216.88. The report contained no mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. The report was delivered by the Postal Service or a private or commercial interstate carrier to the California Secretary of State's office in Sacramento.

33. This report was subsequently amended by the filings made on November 5, 2010, November 15, 2010, and November 18, 2010 referenced above. As noted, in none of those reports was there any mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. And, as noted, all three reports were delivered by the Postal Service or a private or commercial

interstate carrier to the California Secretary of State's office in Sacramento.

February 2, 2011

34. The state disclosure form for Solorio for Assembly 2010 that was apparently signed by KINDE DURKEE and filed on approximately February 2, 2011 for the period of time October 17, 2010 to December 31, 2010 reported that there was cash-on-hand in the amount of \$744,886.80. According to bank records for Solorio for Assembly 2010, however, the actual balance as of December 31, 2010 was only \$62,407.60. The report contained no mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. The report was delivered by the Postal Service or a private or commercial interstate carrier to the California California Secretary of State's office in Sacramento.

August 4, 2011

35. The state disclosure form for Solorio for Assembly 2010 that was apparently signed by KINDE DURKEE and filed on approximately August 4, 2011 for the period of time January 1, 2011 to June 30, 2011 reported that there was cash-on-hand in the amount of \$688,186.54. According to bank records for Solorio for Assembly 2010, however, the actual balance as of June 30, 2011 was \$7,076.38, and on July 29, 2011 was only \$26,446.83. The report contained no mention of the two cashier's checks in the amount of \$300,000 and \$377,181.24. The report was delivered

by the Postal Service or a private or commercial interstate carrier to the California Secretary of State's office in Sacramento.

CONCLUSION

36. For the reasons stated above, I respectfully assert that there is probable cause to believe that between September 1, 2010 and continuing to the present, in the State and Eastern District of California, KINDE DURKEE did devise and intend to devise a material scheme and artifice to defraud Jose Solorio and the Solorio for Assembly 2010 campaign, and to obtain money from them by means of materially false and fraudulent pretenses, representations, and promises; and that, for the purpose of executing and attempting to execute the aforementioned scheme and artifice to defraud, did knowingly cause to be sent or delivered by the Postal Service or any private or commercial interstate carrier, items of mail according to the directions thereon, in

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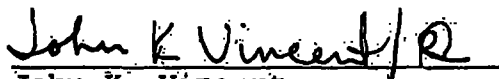
violation of Title 18, United States Code, Section 1341.

I ask that this complaint be filed and that an arrest warrant issue for KINDE DURKEE in this matter.

DATED: September 2, 2011


Reginald L. Coleman
Special Agent
Federal Bureau of Investigation

Approved as to form:


John K. Vincent
Assistant U.S. Attorney

Sworn and Subscribed to me on
September 2, 2011

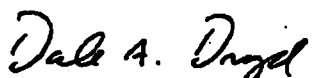

DALE A. DROZD
United States Magistrate Judge

Exhibit C

01/01/2014 14:05:11

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**ORIGINAL
FILED**

MAR 27 2012

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

BY _____
DEPUTY CLERK

9 IN THE UNITED STATES DISTRICT COURT
10 FOR THE EASTERN DISTRICT OF CALIFORNIA

212 - CR - 123 KJM

11 UNITED STATES OF AMERICA,
12 Plaintiff,
13 v.
14 KINDE DURKEE,
15 Defendant.

CASE NO.

VIOLATIONS: 18 U.S.C. § 1341 -
Mail Fraud (5 counts)

18 I N F O R M A T I O N

19 COUNTS ONE THROUGH FIVE: [18 U.S.C. § 1341 - Mail Fraud]

20 The United States Attorney charges:

21 KINDE DURKEE,
22 defendant herein, as follows:

23 I. Introduction

24 1. The State of California Fair Political Practices Commission
25 (FPPC) was formed by the Political Reform Act of 1974. At all
26 relevant times, the FPPC regulated campaign financing and spending in
27 state political races, developed forms which certain candidates and
28 officeholders in the State of California were required to file,

1 prepared manuals and instructions, and investigated alleged
2 violations of the Political Reform Act.

3 2. The Federal Election Commission (FEC) was formed by
4 Congress in 1975. At all relevant times, the FEC was an independent
5 regulatory agency. Its duties included to disclose publicly finance
6 information for federal officeholders and candidates, and to enforce
7 the provisions of the law such as the limits and prohibitions on
8 contributions.

9 3. KINDE DURKEE registered Durkee & Associates as a DBA with
10 the California Secretary of State on April 19, 2000.

11 4. KINDE DURKEE registered Durkee & Associates as a domestic
12 limited liability corporation (LLC) with the California Secretary of
13 State on September 22, 2003. KINDE DURKEE was listed in that filing
14 as a "Member/Manager/Partner" of Durkee & Associates.

15 5. At all relevant times, Durkee & Associates and KINDE DURKEE
16 specialized in providing accounting and campaign reporting services
17 to political committees for state or federal offices, including
18 political candidate campaign committees and non-profit organizations.
19 These services included:

20 - maintaining financial records of, and for, the committees
21 or organizations;

22 - keeping track of the contributions to, and expenditures
23 by, the committees or organizations; and

24 - filing necessary FPPC forms with the California Secretary
25 of State in Sacramento, or the necessary forms with the (FEC), which
26 reported, among other things, contributions, contributors,
27 expenditures, and the overall financial condition of the candidate
28 campaign committees or the organizations for whom a filing was

1 required.

2 6. At all relevant times, KINDE DURKEE frequently served as
3 the committee treasurer for the committees for which services were
4 provided. As such, she signed the campaign disclosure forms for
5 state officials and organizations which were submitted to the
6 California Secretary of State in Sacramento as required by state law.
7 KINDE DURKEE prepared and submitted, and caused the preparation and
8 submission of, campaign disclosure forms for federal officials to the
9 FEC.

10 7. At all relevant times, KINDE DURKEE often acted as the
11 custodian of records for the financial records of those clients who
12 held federal office. As such, she maintained records for all
13 contribution to the campaign committee, as well as the committee's
14 disbursements.

15 8. At all relevant times, KINDE DURKEE and Durkee & Associates
16 maintained bank accounts for their clients. These accounts included
17 ones into which campaign contributions were deposited and from which
18 client expenditures were made. KINDE DURKEE, either alone or with
19 another employee of Durkee & Associates, was a signatory on the bank
20 accounts. Over the years, KINDE DURKEE has had signature authority
21 on approximately 700 bank accounts, including those for political
22 campaigns.

23 9. At all relevant times, KINDE DURKEE was paid for the
24 services rendered. KINDE DURKEE was required to specify how much she
25 was paid in filings made to the California Secretary of State or the
26 FEC.

27 10. At all relevant times, Durkee & Associates had employees
28 that assisted in providing the accounting and campaign reporting

1 services.

2 11. At all relevant times, KINDE DURKEE operated Durkee &
3 Associates and exercised control over the activities of its
4 employees.

5 II. The Scheme to Defraud

6 12. From in or about January 2000 to in or about September
7 2011, in the State and Eastern District of California and elsewhere,
8 KINDE DURKEE did devise and intend to devise and participate in a
9 material scheme and artifice to defraud clients of Durkee &
10 Associates, and to obtain money from them by means of materially
11 false and fraudulent pretenses, representations, and promises.

12 III. Manner and Means

13 To further the scheme and artifice to defraud, defendant KINDE
14 DURKEE did the following over the years:

15 13. KINDE DURKEE routinely misappropriated client funds by
16 moving without authorization substantial sums of money out of client
17 accounts, including political campaign accounts, into Durkee &
18 Associates' or into other clients' accounts.

19 14. KINDE DURKEE submitted and caused to be submitted false
20 information to the California Secretary of State and the FEC in that
21 she did not report these money transfers in and out of accounts on
22 the reports that she submitted or caused to be submitted to the
23 California Secretary of State in Sacramento or the FEC on behalf of
24 her clients. As a result, many of her clients believed that their
25 campaign accounts had more money in there than they actually held.

26 15. KINDE DURKEE used the money transferred from client
27 accounts:

28 - to pay her personal expenses, including mortgage payments

1 and American Express charges;

2 - to pay business expenses, including payroll; and
3 - to repay unauthorized withdrawals from other client
4 accounts.

5 A. Jerome Horton

6 16. At all relevant times, KINDE DURKEE was the treasurer of
7 the campaign committee for California State Board of Equalization
8 Member Jerome Horton.

9 17. Between December 2006 and April 2008, KINDE DURKEE paid
10 without authorization over \$200,000 from the Horton campaign's bank
11 account to Durkee & Associates. Almost none of these payments were
12 accurately reported on the Horton campaign disclosure forms that
13 KINDE DURKEE filed and caused to be filed with the California
14 Secretary of State.

15 18. Between approximately September 2007 and March 2010, KINDE
16 DURKEE repaid approximately \$90,000 to the Horton campaign bank
17 account. None of these repayments were accurately reported on the
18 Horton campaign disclosure forms that KINDE DURKEE filed and caused
19 to be filed with the California Secretary of State.

20 19. In approximately June 2010, when KINDE DURKEE was aware
21 that she was under investigation by the FPPC in connection with the
22 Horton campaign filings, she repaid at least some of the money that
23 she had misappropriated from the Horton account by misappropriating
24 money from three different federal campaign accounts: approximately
25 \$25,000 from Feinstein for Senate; \$30,000 from the Committee to Re-
26 elect Loretta Sanchez; and \$15,000 from the Committee to Re-elect
27 Linda Sanchez.

28 20. None of the foregoing transfers from federal campaigns was

1 reported by KINDE DURKEE in the federal disclosure forms that she
2 filed and caused to be filed with the FEC on behalf of those clients.
3 In addition, KINDE DURKEE did not accurately report the repayment of
4 money in Jerome Horton's disclosure form that she filed and caused to
5 be filed with the California Secretary of State.

6 B. Feinstein for Senate

7 21. At all relevant times, Dianne Feinstein was a United States
8 Senator for the State of California.

9 22. At all relevant times, KINDE DURKEE was the custodian of
10 records for the financial records of Senator Dianne Feinstein's
11 campaign committee. As such, she maintained records for all
12 contributions to the campaign committee, as well as the committee's
13 disbursements.

14 23. At all relevant times, KINDE DURKEE and Durkee & Associates
15 maintained bank accounts for Senator Dianne Feinstein's campaign
16 committee. These accounts included ones into which campaign
17 contributions were deposited and from which client expenditures were
18 made.

19 24. At all relevant times, KINDE DURKEE filed and caused the
20 filing of the necessary disclosure forms for Senator Dianne
21 Feinstein's campaign committee with the FEC.

22 1. The Misappropriation of \$18,000

23 25. On approximately March 2, 2010, KINDE DURKEE caused,
24 without authorization, the deposit of three checks, each for \$6,000
25 on the account of Dianne Feinstein for Senate, to be deposited into a
26 Durkee & Associates' bank account.

27 26. The \$18,000 deposit covered other personal and business
28 expenses of KINDE DURKEE. The deposit covered a mortgage payment of

1 \$2,596.39 for KINDE DURKEE's residence in Long Beach, CA; a payment
2 of \$3,168.11 to Sprint; and a \$10,000 payment for "payroll," which
3 covered payments to, among other things, Durkee & Associates'
4 employees and a 401k plan.

5 2. The Misappropriation of \$40,000

6 27. On approximately May 6, 2010, KINDE DURKEE caused, without
7 authorization, the deposit of two checks, each for \$20,000 on the
8 account of Dianne Feinstein for Senate, to be deposited into a Durkee
9 & Associates' bank account.

10 28. The deposit eventually covered a mortgage payment of \$3,400
11 for KINDE DURKEE's condominium in Long Beach, CA; a payment of \$6,633
12 to Anthem Blue Cross; a payment of \$1,038 to Kaiser Permanente; a
13 payment of \$1,613 to a self-storage company; payments to two
14 employees of Durkee & Associates; and a \$12,000 payment for
15 "payroll," which covered, among other things, payments for bank fees
16 and payments to several employees of Durkee & Associates.

17 3. The Misappropriation of \$23,000

18 29. On approximately July 7, 2010, KINDE DURKEE caused, without
19 authorization, the deposit of two checks, one for \$8,000 and the
20 other for \$15,000, each on the account of Dianne Feinstein for
21 Senate, to be deposited into a Durkee & Associates' bank account.

22 30. The deposit eventually helped to pay a \$30,000 bill to
23 American Express on approximately July 7, 2010. The bill included
24 charges to a variety of entities, including the Los Angeles Dodgers;
25 Union 76; Amazon.com.; Turners Outdoorsman; Harbor Freight Tools;
26 Disneyland; and Trader Joe's.

27 4. The Misappropriation of \$75,000

28 31. On approximately July 19, 2010, KINDE DURKEE caused,

1 without authorization, the deposit of three checks, each for \$25,000
2 on the account of Dianne Feinstein for Senate, to be deposited into a
3 Durkee & Associates' bank account.

4 32. The deposit covered a mortgage payment of \$5,500 for Durkee
5 & Associates' office building in Burbank, CA; a payment of \$2,555.53
6 to a credit card company; and multiple payments to Durkee &
7 Associates' employees, as well as a payroll company.

8 33. None of the foregoing transfers from the Dianne Feinstein
9 for Senate account to a Durkee & Associates' bank account were
10 reported on federal disclosure forms for that campaign committee
11 which KINDE DURKEE filed and caused to be filed with the FEC.

12 C. Committee to Re-elect Loretta Sanchez

13 34. At all relevant times, Loretta Sanchez was a member of the
14 United States Congress representing the 47th Congressional District of
15 California.

16 35. At all relevant times, KINDE DURKEE acted as the treasurer
17 of the campaign committee entitled Committee to Re-elect Loretta
18 Sanchez.

19 36. On approximately March 5, 2010, KINDE DURKEE caused,
20 without authorization, the deposit of a check for \$10,000 on the
21 account of the Committee to Re-elect Loretta Sanchez to be deposited
22 into a Durkee & Associates' bank account.

23 37. The deposit covered a payment of \$7,476 to Anthem Blue
24 Cross.

25 38. The \$10,000 transfer from the Committee to Re-elect Loretta
26 Sanchez to a Durkee & Associates' bank account was not reported on
27 federal disclosure forms for that campaign committee which KINDE
28 DURKEE filed and caused to be filed with the FEC.

1 D. Feinstein for Senate/Committee to Re-elect Loretta Sanchez

2 39. On approximately April 20, 2010, KINDE DURKEE caused,
3 without authorization, the deposit of two checks, each for \$15,000,
4 one on the account of Dianne Feinstein for Senate and the other on
5 the account of the Committee to Re-elect Loretta Sanchez, to be
6 deposited into a Durkee & Associates' bank account.

7 40. The two deposits covered a number of checks, including ones
8 to Chase Card Services, one to cover the fees for KINDE DURKEE's
9 mother at a senior residential facility, and ones payable to several
10 employees of Durkee & Associates. The deposits also covered
11 approximately \$750 in bank fees for non-sufficient funds checks.

12 41. Neither the \$15,000 transfer from the Feinstein for Senate
13 campaign committee nor the \$15,000 transfer from the Committee to Re-
14 elect Loretta Sanchez to a Durkee & Associates' bank account was
15 reported on federal disclosure forms for those campaign committees
16 which KINDE DURKEE filed and caused to be filed with the FEC.

17 E. National Popular Vote

18 1. Misappropriation of \$100,000

19 42. At all relevant times, National Popular Vote (NPV) and
20 National Popular Vote Institute (NPVI) were non-profit organizations
21 whose specific purpose was to study, analyze, and educate the public
22 regarding its proposal to implement a nationwide popular election of
23 the President of the United States.

24 43. At all relevant times, KINDE DURKEE was listed in official
25 filings as the Chief Financial Officer of NPV and NPVI.

26 44. At all relevant times, KINDE DURKEE maintained records
27 concerning contributions to, and expenditures by, those entities.
28 She also exercised control over funds of NPV and NPVI.

45. On approximately April 27, 2010, KINDE DURKEE caused, without authorization, a check for \$100,000 on the account of National Popular Vote to be deposited into a Durkee & Associates' bank account.

46. The deposit covered a number of checks, including ones to American Express, several employees of Durkee & Associates, Kaiser Foundation Health Plan, Chase, and nearly \$600 in bank fees for non-sufficient funds checks.

2. Misappropriation of \$80,000

47. On approximately March 17, 2011, KINDE DURKEE caused, without authorization, two checks on the account of National Popular Vote, one for \$65,000 and the other for \$15,000, to be deposited into a Durkee & Associates' bank account.

48. The deposit covered the following items:

| Item | Amount | Payee |
|-------|----------|-------------------------------------|
| Check | \$3,000 | Michael D. Antonovich |
| Check | \$1,000 | Susan Davis for Congress |
| Check | \$1,000 | Foster for Treasurer 2014 |
| Check | \$1,000 | Stop LA Oil Tax No on Prop O |
| Check | \$25,000 | California Legislative Black Caucus |
| Check | \$1,500 | Equality Network |
| Check | \$5,000 | California Educational Solutions |
| Check | \$3,000 | Center for Civic Participation |
| Check | \$3,000 | National Popular Vote |
| Check | \$10,000 | Durkee & Associates |

49. Neither KINDE DURKEE nor Durkee & Associates informed NPV or NPVI of these unauthorized withdrawals.

///

1 F. Dianne Feinstein, Loretta Sanchez, and Linda Sanchez

2 50. At all relevant times, Linda Sanchez was a member of the
3 United States Congress representing the 39th Congressional District of
4 California.

5 51. At all relevant times, KINDE DURKEE acted as the treasurer
6 of the campaign committee entitled Committee to Re-elect Linda
7 Sanchez.

8 52. On approximately June 10, 2010, KINDE DURKEE caused,
9 without authorization, the deposit of three checks, each for \$10,000,
10 one on the account of Dianne Feinstein for Senate, another on the
11 account of the Committee to Re-elect Loretta Sanchez, and a third on
12 the account of the Committee to Re-elect Linda Sanchez, to be
13 deposited into a Durkee & Associates' bank account.

14 53. The deposit helped to cover a \$25,000 payment to American
15 Express, a loan payment of \$2,855.72 on KINDE DURKEE's residence in
16 Long Beach, a payment to Kaiser Foundation Health, and nearly \$600 in
17 bank fees for non-sufficient funds checks.

18 54. Neither KINDE DURKEE nor Durkee & Associates reported the
19 \$10,000 transfer from the Feinstein for Senate campaign committee,
20 the \$10,000 transfer from the Committee to Re-elect Loretta Sanchez,
21 or the \$10,000 transfer from the Committee to Re-elect Linda Sanchez
22 to a Durkee & Associates' bank account on any of the federal
23 disclosure forms for those campaign committees which KINDE DURKEE
24 filed and caused to be filed with the FEC.

25 G. Lou Correa for State Senate 2010

26 55. From 1998 to 2004, Lou Correa was a member of the
27 California State Assembly representing Central Orange County.

28 56. From 2004 to 2006, Lou Correa was a member of the Orange

1 County Board of Supervisors.

2 57. From 2006 to the present, Lou Correa was a member of the
3 California State Senate representing the 34th District.

4 58. At all relevant times, KINDE DURKEE acted as the treasurer
5 of the campaign committees for Lou Correa.

6 59. On approximately September 29, 2010, KINDE DURKEE caused,
7 without authorization, a cashier's check in the amount of
8 \$207,751.39, which was drawn on a certificate of deposit account in
9 the name of Lou Correa for State Senate, to be deposited into a
10 Durkee & Associates' bank account.

11 60. These funds were subsequently combined with other funds,
12 including a \$25,000 deposit from the account of Dianne Feinstein for
13 Senate, to cover the following items:

14

| Item | Amount | Payee |
|----------|-----------|-------------------------------------|
| 15 Check | \$2,000 | Richardson for Congress |
| 16 Check | \$2,000 | Richardson for Congress |
| 17 Check | \$5,000 | Warner for Congress |
| 18 Check | \$30,000 | Committee to Re-elect Linda Sanchez |
| 19 Check | \$15,000 | National Popular Vote Institute |
| 20 Check | \$72,000 | Susan Davis for Congress |
| 21 Check | \$7,000 | National Popular Vote |
| 22 Check | \$150,000 | Friends of Steve Pougnet |

23 61. KINDE DURKEE filed and caused the filing of numerous false
24 campaign disclosure forms (entitled California Form 460s - Recipient
25 Committee Campaign Statement) for Lou Correa for State Senate 2010
26 with the California Secretary of State. The Ending Cash Balance
27 reported in the forms was vastly higher than what was actually in the
28 campaign account.

62. KINDE DURKEE filed and caused the filing of a disclosure form with the California Secretary of State for the Lou Correa for State Senate campaign committee which did not report as required the \$207,751.39 transfer from that campaign committee to a Durkee & Associates' bank account. KINDE DURKEE also filed and caused the filing of a disclosure form with the FEC for the Dianne Feinstein for Senate campaign committee which did not report as required the \$25,000 transfer from that campaign committee to a Durkee & Associates' bank account.

H. Solorio for Assembly 2010

1. The Misappropriation of \$300,000

63. From 2006 to the present, Jose Solorio was a member of the California State Assembly representing the 69th District.

64. At all relevant times, KINDE DURKEE was the treasurer of the campaign committee for Solorio for Assembly 2010.

65. On approximately October 1, 2010, KINDE DURKEE caused, without authorization, a cashier's check in the amount of \$300,000, which was drawn from a money market account in the name of Solorio for Assembly 2010, to be deposited into a Durkee & Associates' bank account.

66. These funds were subsequently combined with other funds to cover the following items:

| Item | Amount | Payee |
|-------|-----------|--|
| Check | \$125,000 | Committee to Re-elect Loretta Sanchez |
| Check | \$32,000 | Merchant Account (Durkee & Associates) |
| Check | \$21,000 | Durkee & Associates |
| Check | \$25,000 | Durkee & Associates |
| Check | \$15,000 | Merchant Account (Durkee & Associates) |

67. A portion of the \$32,000 check to the Merchant Account ultimately covered several checks to Durkee & Associate's employees.

68. A portion of the \$25,000 check to Durkee & Associates ultimately covered payments to American Express, one in the amount of \$16,854.76 and another in the amount of \$679.03. The payments to American Express covered charges from a variety of entities, including: Union 76; Amazon.com (gift cards); Baskin Robbins; Ulta; Turners Outdoorsman; Deckert Surgical; Ariel's Grotto at Disneyland; TIVO, Inc.; Bixby Animal Clinic; and the Aquarium of the Pacific in Long Beach.

2. The Misappropriation of \$377,181.24

69. On approximately October 8, 2010, KINDE DURKEE caused, without authorization, a cashier's check in the amount of \$377,181.24, which was drawn from a money market account in the name of Solorio for Assembly 2010, to be deposited into a Durkee & Associates' bank account.

70. These funds were subsequently combined with other funds to cover the following items:

| Item | Amount | Payee |
|-------|----------|--|
| Check | \$45,000 | Durkee & Associates |
| Check | \$45,000 | Committee to Re-elect Loretta Sanchez |
| Check | \$60,000 | Beth Krom for Congress |
| Check | \$40,000 | Susan Davis for Congress |
| Check | \$25,000 | Merchant Account (Durkee & Associates) |
| Check | \$25,000 | Merchant Account (Durkee & Associates) |
| Check | \$5,000 | Durkee & Associates |
| Check | \$6,000 | Durkee & Associates |
| Check | \$5,000 | CAL ACE - LA Efforts |

| | | |
|-------|----------|---------------------|
| Check | \$20,000 | Durkee & Associates |
| Check | \$10,000 | Durkee & Associates |

71. The \$45,000 check which was deposited into a Durkee & Associates' bank account was ultimately used to cover fees for KINDE DURKEE's mother at a senior residential facility, and to pay at least three of Durkee & Associate's employees.

72. The two \$25,000 checks to the Merchant Account were ultimately used to cover payments for a number of things, including payments to the Democratic Foundation of Orange County - Voter Guide (\$13,000) and National Popular Vote (\$5,000).

73. The \$6,000 check which was deposited into a Durkee & Associates' bank account helped to cover a portion of the mortgage payment of \$5,500 for Durkee & Associates' office building in Burbank.

74. The \$20,000 check which was deposited into a Durkee & Associates' bank account covered a negative balance in that account and was also used to cover a payment to American Express in the amount of \$1,284.59.

75. KINDE DURKEE filed and caused the filing of numerous false campaign disclosure forms (entitled California Form 460s - Recipient Committee Campaign Statement) for the Solorio for Assembly 2010 campaign committee with the California Secretary of State. The Ending Cash Balance reported in the forms was vastly higher than what was actually in the campaign's bank account.

76. KINDE DURKEE filed and caused the filing of a disclosure form with the California Secretary of State for the Solorio for Assembly 2010 campaign committee which did not report as required the

1 \$300,000 transfer or the \$377,181.24 transfer from that campaign
2 committee to a Durkee & Associates' bank account.

3 IV. Summary

4 77. There were at least 50 victims of this scheme. As a result
5 of the fraudulent scheme described herein, KINDE DURKEE caused a loss
6 exceeding \$7 million dollars to her clients.

7 V. Mailings

8 78. On or about the dates set forth below, in the State and
9 Eastern District of California and elsewhere, for the purpose of
10 executing and attempting to execute the aforementioned scheme and
11 artifice to defraud, defendant KINDE DURKEE did knowingly place and
12 cause to be placed in any post office or authorized depository for
13 mail matter for delivery by the United States Postal Service, deposit
14 and cause to be deposited any matter to be sent or delivered by any
15 private or commercial interstate carrier, and cause to be delivered
16 by United States mail or such carrier according to the directions
17 thereon, the mail matter specified below:

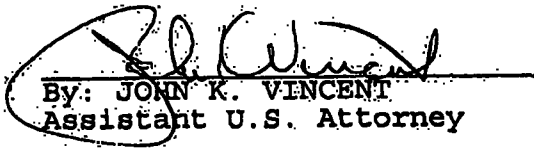
| Count | Date | Mail Matter | Delivered To |
|-------|----------|---|--|
| 1 | 7/19/10 | FEC Form 3 Report of Receipts and Disbursements for Dianne Feinstein for Senate | Senate Office of Public Records 232 Hart Senate Office Building Washington, DC 20510 |
| 2 | 10/6/10 | Form 460 for Lou Correa for State Senate for the period 7-1-10 to 9-30-10 | California Secretary of State Sacramento, CA |
| 3 | 1/31/11 | Form 460 for Lou Correa for State Senate for the period 10-17-10 to 12-31-10 | California Secretary of State Sacramento, CA |
| 4 | 10/21/10 | Form 460 for Solorio for Assembly 2010 for the period 10-1-10 to | California Secretary of State Sacramento, CA |

| | | | |
|---|--------|---|--|
| | | 10-16-10 | |
| 5 | 2/2/11 | Form 460 for Solorio for Assembly 2010 for the period 10-17-10 to 12-31-10 | California Secretary of State Sacramento, CA |

All in violation of Title 18, United States Code, Sections 2 and 1341.

BENJAMIN B. WAGNER
United States Attorney

Date: March 27, 2012


By: JOHN K. VINCENT
Assistant U.S. Attorney

43050444051

Exhibit D



IRST CALIFORNIA BANK

September 16, 2011

Re: Durkee & Associates

Dear Durkee Client:

We have been working diligently to try to resolve the status of the accounts that were controlled by Durkee & Associates ("Durkee"). The more we investigated the situation, the more it appears that Durkee had comingled funds belonging to various different campaigns and organizations and had made repeated transfers between accounts on which Durkee had signing authority.

We concluded that there was a very high likelihood that the balance credited to any given account did not represent accurately the funds, if any, actually belonging to the campaign or organization named on the account. In certain circumstances, it is apparent that account balances contained funds that had previously been credited to non-related accounts. These conditions appeared to be pervasive in the Durkee controlled accounts.

Faced with grave uncertainties and conflicting, or potentially conflicting, demands, based upon advice of counsel, the Bank determined that it would file an interpleader action in Los Angeles Superior Court with respect to all, or at least the vast majority, of the Durkee controlled accounts.

The Bank will remit the account balances to the appropriate court, which will then be in a position, over time, to determine the specific amounts that are owed to each of the campaigns, candidates and organizations that had utilized the services of Durkee. We believe that this is the best way to ensure that all of the Durkee clients are treated fairly and equitably with full judicial oversight.

Each of the parties to the interpleader action will be receiving service of process. In order to expedite the matter, you might want to provide us with the name of the appropriate person with, or attorney for, the campaign or organization as well as his/her address. To do so, please complete the enclosed form and return it in the envelope provided or you may also email the information to durkeeinfo@fcbank.com or call First California Bank's Client Services Group at 1-800-856-7905.

Very truly yours,

Edmond R. Sahakian
Executive Vice President
Branch Administrator

P. O. Box 5112 Westlake Village, CA 91359-5112

Phone 800-856-7905

Fax 805-437-4358

www.fcbank.com Member FDIC